

(2017) 05 SHI CK 0083
In the High Court Of Himachal Pradesh
Case No : 4623 of 2015

STATE OF H P

APPELLANT

Vs

SARVJOT SINGH BEDI AND OTHERS

RESPONDENT

Date of Decision : 17-05-2017

Acts Referred:

Constitution of India, Article 226, Article 227 -
Himachal Pradesh Tenancy and Land Reforms Rules, 1975, Rule 38(b) -
Himachal Pradesh Tenancy And Land Reforms Act, 1972, Section 61, Section 2(2), Section 118, Section 119(1), Section 118(1)

Citation : (2017) 05 SHI CK 0083

Hon'ble Judges : Sanjay Karol, Sandeep Sharma

Bench : Division Bench

Advocate : Shrawan Dogra, Anup Rattan, Romesh Verma, J K Verma, R L Sood, Arjun Lal

Final Decision : Dismissed

Judgement

1. By way of present writ petition filed under Articles 226/227 of the Constitution of India, petitioner-State has laid challenge to order dated 30.9.2014 passed by Financial Commissioner (Appeals), Himachal Pradesh in Revenue Revisions No. 74/2013 (156/97) & 75/2013 (157/97), whereby revision petitions of the respondents herein have been allowed and possession of land has been ordered to be returned back to the owners of the land and orders dated 13.5.1996 passed by the Divisional Commissioner, Shimla and dated 20.9.1995 passed in Case No. 15/13 of 1991 by Collector, Solan have been set aside.

2. The genesis of the entire case is based on the order of Collector, Solan, passed in Cases No. 15/13 of 91. In nutshell, case of the State was that Tehsildar, Kasauli reported that in Mauza Shilora Khurd, one Prem Singh bought 14 Bigha of land in Khasra Nos. 228 and 229 measuring 36-13 Bighas. Out of this 14

Bigha of land was sold by him to one Sarvjot Singh Bedi son of Shri Madhu Sudan Bedi, resident of Una. Subsequently, Shri Sarvjot Singh Bedi transferred this land to Shri G.S. Chopra of Delhi, through Astra Construction Company. After receipt of this report, notice was issued to all the three parties for violation of Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act. Sarvjot Singh and G.S. Chopra, filed written replies in response to the notice. The State, in support of its claim produced Patwari Kasauli and Tehsildar Kasauli as witnesses, whereas from other side, one witness Kedar Nath was examined. Respondents No. 2 and 3 produced documents to show that Astra Construction Company was a construction company and General Power of Attorney, was only executed in favour of G.S. Chopra, for construction of flats on behalf of the original owner namely Sarvjot Singh.

3. The petitioner-State pleaded before the Collector Solan that from the report of Tehsildar Kasauli, it was clear that Sarvjot Singh Bedi, who was owner of 7 Bigha of land, had transferred this land to Shri G.S. Chopra, of Astra Estate Company in violation of Section 118 of the Act, as G.S. Chopra was a non-agriculturist and this fact remained unrebutted by the respondents. Patwari and Tehsildar, who were examined, deposed that G.S. Chopra was found in possession of suit land and he was constructing various flats and was selling them of his own. He also drew attention to the General Power of Attorney given by Shri Sarvjot Singh Bedi on 25.6.1990 in favour of Shri G.S. Chopra. It was further argued that as per paras 6 to 10 of the General Power of Attorney, all the powers to manage this property had been given to G.S. Chopra and for all intents and purposes, land had been transferred to G.S. Chopra and Sarvjot Singh was no more in picture. On the other hand, respondents before the Collector stated that Prem Singh had sold suit land to Sarvjot Singh, who was an agriculturist of Himachal Pradesh. Sarvjot Singh in his reply stated that he purchased land vide sale deeds dated 15.6.90 and 12.7.90 and Astra Estate Company was only carrying out construction work on his behalf. He also drew attention towards the reply filed by G.S. Chopra, in which he had replied that Sarvjot Singh Bedi vide two sale deeds dated 15.6.90 and 12.7.90 had bought land from Prem Singh of village Manoon, Tehsil Kasauli, and he, as a Director of Astra Estate Company was constructing tourist resort for Sarvjot Singh Bedi. In his reply, he also mentioned that since company cannot be given power of attorney to carry out the work, the Power of Attorney had been given in his favour as representative of the company.

4. The learned Collector below, after hearing the parties and appreciating the evidence adduced before him, held that land measuring 7 Bigha comprising of Khasra Nos. 228 and 229 situate in Mauza Shilora Khurd, Village Manoon had been transferred by Sarvjot Singh Bedi in favour of G.S. Chopra, who was a non-agriculturist, in violation of Section 118 of the Act *ibid* and therefore, in exercise of powers under Section 118 of the Act, ordered the land in question to be vested in the State Government with all structures, buildings and other attachments free from all encumbrances. Tehsildar, Kasauli, was directed to take over the possession.

5. Being aggrieved, Sarbjot Singh Bedi and G.S. Chopra, filed an appeal under Section 61 of the Act *ibid* before Divisional Commissioner, Shimla, who vide order dated 13.5.1996, upheld the findings returned by the Collector, Solan and dismissed the appeal.

6. Aforesaid persons, being further aggrieved, filed revision petition before the Financial Commissioner (Appeals), being Revenue Revision Nos. 74/2013 (156/97) and 75/2013 (157/97), which were disposed of by the aforesaid authority on 30.9.2014, holding that the Power of Attorney putting a nonagriculturist in possession of land, was more of functional autonomy given to the company and also securitizing their investments. The authority below further held that there was no registration, sale deed etc. which could be construed as violation of the Act *ibid*.

7. The State being aggrieved by order dated 30.9.2014, has preferred instant writ petition laying therein challenge to the aforesaid order.

8. Mr. Shrawan Dogra, learned Advocate General duly assisted by Mr. Anup Rattan, learned Additional Advocate General, vehemently opposed the order passed by the Financial Commissioner (Appeals) stating that the same was perverse and inconsistent with the provisions of Section 118 of the Act *ibid* and same is not based upon correct appreciation of record. Mr. Dogra, further stated that Section 118 of the Act *ibid* specifically prohibits transfer of land into the hands of a non-agriculturist by way of sale, gift, exchange, lease, mortgage, power of attorney, agreement etc. It was further argued by the learned Advocate General that the findings of the learned Financial Commissioner (Appeals) would encourage such illegal transactions and undermine the interest of general public. It was further argued on behalf of the State that the learned Collector below had rightly held the transaction to be Benami as, by way of Power of Attorney, land had been transferred to a nonagriculturist. Learned Advocate General further argued that huge loss had been caused to the State Exchequer due to nonaffixing of stamp duty. Mr. Shrawan Dogra, learned Advocate General prayed that the order passed by Financial Commissioner (Appeals) be set aside and that of the Collector Solan and Divisional Commissioner, Shimla be upheld.

9. Mr. R.L. Sood, learned Senior Advocate duly assisted by Mr. Arjun Lal, Advocate, supported the order passed by Financial Commissioner (Appeals). Mr. Sood argued that there was no violation of Section 118 of the Act as rigors of amendment carried out in the Act *ibid* admittedly on 22.3.2015, could not be applied retrospectively. He further argued that the fact that the revenue petitions filed by the respondents were initially decided against respondents on 13.5.1996 and as such respondents laid challenge to the same by filing CWP No. 1088 of 2003, which was disposed of on 1.10.2013, setting aside order of the Financial Commissioner (Appeals) and directing the said authority to decide the petitions afresh taking on record fresh material and considering all the pleas raised by the respondents, pursuant to which, order dated 30.9.2014 was passed, which is under question in this petition. Mr. Sood, further argued that the Power of

Attorney and agreement were dated 26.5.1990 and 30.6.1990, and same did not show that land had been transferred in the name of respondent No.3 and as such rigors of amendment to Section 118 of the Act, carried out on 22.3.1995 could not be given retrospective effect.

10. We have heard the learned counsel for the parties and gone through the record carefully.

11. At the very outset, it may be noticed that issue with regard to validity of Section 118 of the Act, stands settled by a Division Bench of this Court vide judgment dated 1.10.2013 passed in CWP No.443 of 1995, titled Som Kirti alias Som K.Nath and others vs. State of H.P. and others, whereby the Division bench has upheld the validity of Section 118 of the Act and as such this Court has no occasion, whatsoever, to examine validity, if any, of Section 118 of the Act.

12. However, this Court, with a view to ascertain the correctness and legality of the impugned order passed by the learned Financial Commissioner (Appeals) as well as arguments having been advanced by Mr. R.L. Sood, learned Senior Advocate, wherein he argued that no penal action, if any, in terms of Section 118 of the Act could be taken against the respondents, even if it is presumed that Power of Attorney in question was executed to sell land in favour of the Mr. G.S. Chopra, would be examining the issue at hand in light of provisions contained in Section 118 of the Act.

13. After having gone through the facts as emerge from the record, in nutshell, case of the respondents before authorities below was that there is / was no intention, if any, to effect sale of land in question, in favour of G.S. Chopra by Sarvjot Singh and Power of Attorney was only given for carrying out construction on the land owned and possessed by Sarvjot Singh.

14. The State of Himachal Pradesh enacted H.P. Tenancy and Land Reforms Act, 1972, Chapter-XI deals with Control on transfer of land, wherein under Section 118 transfer of land to non-agriculturists is prohibited, it would be relevant to reproduce herein below Section 118 amended by amendment Act, 1988:- "118. Transfer of land to Non-agriculturists Barred.-

(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, on transfer of land (including sales in execution of a decree of a civil Court or for recovery of arrears of land revenue), by way of sale, gift, exchange, lease, mortgage with possession or creation of a tenancy shall be valid in favour of a person who is not an agriculturist.

(2). Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of-(a) to (h)".

(i) a non-agriculturist with the permission of State Government for the purpose that may be prescribed:

Provided.....

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 (16 of 1908), shall register any document pertaining to a transfer of land, which is in contravention to sub-section (1) and such transfer shall be void ab initio and the land involved in such transfer, if made in contravention of sub-section (1), shall, together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances."

15. Aforesaid provisions of law clearly suggest that no land could be transferred by way of sale, gift, will, exchange, lease, mortgage with possession, creation of tenancy or in any other manner, in favour of a person, who is not an agriculturist. Further, the proviso to provision referred herein above, clearly provides that even a non-agriculturist can purchase land with prior approval of the State Government. However, close scrutiny of aforesaid provision as amended; certainly suggests that there is / was no bar to transfer land by way of agreement and power of attorney. But, at this stage, it may be noticed that H.P. Tenancy and Land Reforms (Amendment) Act, 1994 came into force on 22.3.1995, wherein explanation of Section 118 (1) of the amending Act was incorporated as under: "Explanation.- For the purpose of this subsection, the expression "transfer of land" shall include:-

(a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non agriculturist, and

(b) an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a nonagriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land."

16. It clearly emerges from aforesaid amendment, which came into force on 22.3.1995, that no transfer of land could be made, by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with like manner, as if he is real owner of that land. But, explanation appended to aforesaid amendment, which admittedly came into operation on 22.3.1995, certainly suggests that no transfer of land could be made by way of agreement as well as Power of Attorney after this amendment.

17. In the case in hand, as clearly emerges from record, alleged Power of Attorney was executed by Sarvjot Singh, in favour of G.S. Chopra, in the year 1990 i.e. admittedly before coming into operation of the HP Tenancy and Land Reforms (Amendment) Act, 1994, whereafter, transfer of land was made prohibitive by way of agreement and Power of Attorney. Though, in the instant case, respondents from the very inception of proceedings initiated against them, for violating the provisions contained in Section 118 of the Act, have taken stand that they never intended to effect sale, if any, in favour of G.S. Chopra, rather, Power of Attorney was executed for construction of flats on the land owned and

possessed by Sarvjot Singh. But, even if, for the sake of arguments, it is presumed that Power of Attorney in question was for effecting sale, which was admittedly executed on 25.6.1990, this Court sees force in the arguments of Mr. R.L. Sood, learned Senior Advocate that there was no bar as such prior to coming into force of the amending Act, for execution of Power of Attorney as well as agreement.

18. This Court, after having carefully perused aforesaid amendment, which came into force on 22.3.1995, as well as case law relied upon by the learned Financial Commissioner (Appeals), while allowing the revision having been preferred by the respondents, i.e. Smt. Santosh Malhotra versus State of H.P. and Others, 2003 (3) Shim. L.C. 342, has no hesitation to conclude that there is no illegality in the impugned order passed by the Financial Commissioner (Appeals).

19. At this stage, this Court deems it necessary to refer to the law made by this Court in the aforesaid case of Santosh Malhotra, where this Court has held as under:- "12. I have duly considered the respective contentions of the learned counsel for the parties. From the perusal of the original record of the Collector, Shimla, it is not in dispute that notices were issued by the collector to Jaidev Malhotra, Sh.B.N. Malhotra, Smt.Santosh Malhotra and Suresh Kumar Shukla under Section 119(1) of "the Act" and Rule 38(B) of H.P. Tenancy and Land Reforms Rules, 1975. All the parties have appeared before the Collector. Sh.B.N. Malhotra made the specific statement that his son Jaidev Malhotra purchased land in Kachhighati on which building had been constructed Jaidev Malhotra made the statement that the land in dispute belongs to his mother Smt. Santosh Malhotra on which he constructed the building. The Collector Shimla passed the order dated 20.2.1995 (Annexure P-2) in case No.1/94 against Jaidev Malhotra on the basis of the Income-tax returns filed by him before the Income Tax Department for the assessment years 1993-94 and 1994-95 in which he had shown having spent a sum of Rs.1,90,000/-on the construction of the building. The Collector Shimla in his order recorded the findings that as the General Power of Attorney (Annexure P-1) has been executed by Suresh Kumar Shukla owner of the land in favour of Smt.Santosh Malhotra keeping in view the fact that no sale deed could be executed in favour of Smt.Santosh Kumar Mahlotra as she is not the agriculturist of State of H .P. and Jaidev Malhotra invested a sum of Rs.1,90,000/- for the construction of the building, therefore, the land has been acquired by him in violation of Section 118 of "the Act". The order of the Collector has been affirmed both by the Divisional Commissioner and by the Financial Commissioner in appeal. 13. The State of Himachal Pradesh enacted the H.P. Tenancy and Land Reforms Act, 1972. Chapter XI deals with Control on transfer of land. Section 118 prohibits the transfer of land to non-agriculturists which reads as under:

"118. Transfer of land to Non-Agriculturists Barred-

(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise

provided in this Chapter, on transfer of land (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue), by way of sale, gift, exchange, lease, mortgage with possession or creation of a tenancy shall be valid in favour of a person who is not an agriculturist.

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of"

(a) to (h).....

(i) a non-agriculturist with the permission of State Government for the purpose that may be prescribed: Provided.....

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 (16 of 1908), shall register any document pertaining to a transfer of land, which is in contravention to sub-section (1) and such transfer shall be void ab initio and the land involved in such transfer, if made in contravention of sub-section (1), shall, together with structures, buildings or other attachments, if any, vest in the State Government free from all encumbrances.

14. The revenue authorities below have mis-directed themselves in applying the above extracted provisions of Section 118 of the Act" in the present case. Suresh Kumar Shukla has not transferred his ownership rights and interest in the property in favour of Smt. Santosh Malhotra by way of General Power of Attorney (Annexure P-1) and the transfer by way of execution of the General Power of Attorney is not incorporated in Section 118(1) of the Act. The transfer of land to non-agriculturist is only barred under Section 118 (1) if the transfer is by way of sale gift, exchange, lease, mortgage with possession or creation of tenancy including sales in execution of a decree of a Civil Court or for recovery of arrears of Land Revenue. The General Power of Attorney has been executed on 7.11.1991 by Suresh Kumar Shukla the owner of the property in favour of Smt. Santosh Malhotra in which she has only been authorized to look after, manage, sell or construct the building on the piece of land, to enter into agreement, to sell, to receive the earnest money, to execute or sign on the sale deed etc. etc. On bare reading of General Power of Attorney it cannot be concluded that Suresh Kumar Shukla has transferred the land by way of sale, gift, etc. etc. envisaged in Section 118 (1) of the Act in favour of Smt. Santosh Malhotra or in favour of Jai Dev Malhotra nor it is proved on record that Smt. Santosh Malhotra has sold the land to her son Jaidev Malhotra on the strength of the General Power of Attorney. The reasoning of the Collector that as Jaidev Malhotra had spent a sum of Rs.1,90,000/- on the construction of the building on the land as reflected by him in his Income-tax returns will not be a sufficient proof that Suresh Kumar Shukla has transferred the land to Jaidev Malhotra on the basis of the General Power of Attorney executed in favour of his mother. The H.P. Tenancy and Land Reforms (Amendment) Act, 1994 came into force on 22.3.1995 whereas the General Power of Attorney (Annexure P-1) has been executed on 7.11.1991, as noticed above and the Collector passed the order (Annexure P-2) on 20.2.1995, prior to

the date of the enforcement of the amended Act. Explanation of Section 118 (1) of the Amendment Act reads as under:

"Explanation " For the purpose of this subsection, the expression "transfer of land" shall include:-

(a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non agriculturist, and

(b) an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land."

15. On perusal of the above said amendment, it is clear that an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non-agriculturist in possession of the land and allow him to deal with the land in like manner as if he is a real owner of the land has been brought on the statute on 20.2.1995 and this restriction was not the mode incorporated in Section 118 (1) of the Principal Act. 16. In that view of the matter, the revenue authorities below have passed the impugned orders against Jaidev Malhotra contrary to the provisions of Section 118 of the Principal Act as the provisions of the Amendment Act cannot be applied retrospectively in the present case."

20. During proceedings of the case, this Court had an occasion to go through entire record including orders passed by authorities below, perusal whereof clearly suggests that authorities below, held that respondents have executed General Power of Attorney in favour of G.S. Chopra in violation of Section 118 of the Act. Admittedly, in the instant case, as clearly emerges from the record and pleadings, General Power of Attorney was executed by Sarvjot Singh in favour of G.S. Chopra on 25.6.1990, for the construction of flats on the land in question prior to coming into operation of HP Tenancy and Land Reforms (Amendment) Act, 1994. There was no bar as such under Section 118 (1) for transferring land by way of Power of Attorney and agreement, rather, bar under Section 118 for sale was by way of gift, exchange, will, lease, exchange, mortgage with possession or tenancy (including sales in execution of a decree of land revenue). In the instant case, General Power of Attorney as well as agreement were executed by Sarvjot Singh, original owner of property in favour of G.S. Chopra admittedly prior to amendment carried out in Section 118 of the Act and moreover, that was for construction of flats on the land in question, on behalf of original owner, Sarvjot Singh.

21. Though, Shri Shrawan Dogra, learned Advocate General, has contended that as per Section 2 (2) of the Act, an agriculturist means a land owner, who cultivates the land personally in the State and in the instant case, revenue record clearly suggests that grand father and father of Smt. Tara Chopra, who happened to wife of G.S. Chopra, was a Pattadar and they enjoyed status of lessee and not

owner. Mr. Dogra, further contended that perusal of record, nowhere suggests that Smt. Tara Chopra, wife of G.S. Chopra, was cultivating land personally and as such she can not be said to be enjoying status of an agriculturist. He further stated that perusal of agreement itself suggests that very intention of original owner Sarvjot Singh was to effect sale because agreement provides that Astra Construction Company will construct 30 cottages, motel, club house, shops, health spa, sports and museum facilities. No right of owner shall exist till construction cost is paid to company and after construction of the complex, parties shall start running the tourist resort in collaboration with each other for a period of 30 years commencing from the date the complex becomes functional in which the share of the owner will be 15% and 85% share belongs to contractor company. But, as has been observed above, controversy, which is required to be decided by this Court at this stage is whether Power of Attorney and agreement dated 25.6.1990/30.6.1990, whereby original owner Sarvjot Singh, allegedly intended to effect sale in favour of G.S. Chopra, can be termed to be in violation of Section 118 of the amending Act"

22. Similarly, this Court needs to examine, whether agreement dated 30.6.1990, can be considered as transfer of land on permanent basis, in violation of the Act or a functional/temporary transfer simply for the purpose of execution of contract. The H.P. Tenancy and Land Reforms (Amendment) Act, 1994 came into force on 22.3.1995 whereas the General Power of as well as agreement have been executed on 25.6.1990 and 30.6.1990, respectively, as noticed above and the Collector passed the order on 20.2.1995 prior to the date of the enforcement of the amended Act. Explanation of Section 118(1) of the Amendment "Act" reads as under: "Explanation " For the purpose of this sub-section, the expression "transfer of land" shall include:- (a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non agriculturist, and

(b) an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put a non agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land." (Pp.347,348 & 349)

23. A Coordinate Bench of this Court, in judgment passed in Santosh Malhotra"s case (supra) has categorically held that provisions contained in the principal Act by amending Act, 1994, which came into force on 22.3.1995, can not be made applicable in case, which pertains to years prior to the amendment carried out in the Act, which came into force on 22.3.1995. Hence, this Court sees no illegality in the findings returned by the learned Financial Commissioner (Appeals) that revenue authorities have passed impugned orders against the respondents, contrary to the provisions of Section 118 of the amending Act, because the amending Act, which came into force on 22.3.1995, could not be made applicable retrospectively, in the present case. It is well settled that in the absence of anything specific in the enactment to show that it is to have retrospective effect,

it can not be so construed as to have the effect of altering the law applicable to claim under litigation at the time when the Act was passed (See: Garikapatti Veeraya vs. N. Subbiah Choudhury, 1957 SCR 488).

24. This Court, after having carefully perused provisions contained in the HP Tenancy and Land Reforms (Amendment) Act, 1994, whereby expression, "transfer of land", was amended, this Court was unable to lay its hand on specific clause, if any, stating therein that amendment would have retrospective operation and as such, it can be safely inferred that amending Act, 1994 was prospective in nature. It clearly emerges from the judgment passed by this Court in Santosh Malhotra's case that, issue at hand is no more *res integra*, rather, after passing aforesaid judgment, this Court in a number of judgments has reiterated the view taken in Santosh Malhotra's case (*supra*). It is also not disputed that the law settled in Santosh Malhotra's case (*supra*) has attained finality. This Court also deems it fit to take note of judgment passed by this Court in Dhyani Singh vs. State of Himachal Pradesh and others, 2012 (3) Shim. L.C. 1741, wherein, while dealing with aforesaid aspect of amendment, it has also dealt with issue of retrospectivity. It would be profitable to refer to para-6 of the judgment:- "6. Learned Counsel also places reliance on the decision of the Supreme Court in Maharaja Chintamani Saran Nath Shahdeo v. State of Bihar and others, (1999)8 SCC 16. The Court holds:

22. In view of the facts and circumstances of the case and in the alternative Mr. Agarwal, the learned counsel for the respondent has urged that the amending Act being substituted legislation would have retrospective effect.

23. In Garikapatti Veeraya v. N. Subbiah Choudhury, [1957] SCR 488, Chief Justice S.R. Das speaking for the Court observed as follows :

"The golden rule of construction is that, in the absence of anything in the enactment to show that it is to have retrospective operation, it cannot be so construed as to have the effect of altering the law applicable to a claim in litigation at the time when the Act was passed." 24. We may also refer to Francis Bennion's Statutory Interpretation, 2nd Edn., at p. 214 wherein the learned author commented as follows:

"The essential idea of a legal system is that current law should govern current activities. Elsewhere in this work a particular Act is likened to a floodlight switched on or off, and the general body of law to the circumambient air. Clumsy though these images are, they show the inappropriateness of retrospective laws. If we do something today, we feel that the law applying to it should be the law in force today, not tomorrow's backward adjustment of it. Such, we believe, is the nature of law. Dislike of *ex post facto* law is enshrined in the United States Constitution and in the Constitutions of many American States, which forbid it. The true principle is that *Lex prospicit non respicit* (law looks forward not back). As Willes, J. said, retrospective legislation is `contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when

introduced for the first time, to deal with future acts, and ought not to change the character of past transactions carried on upon the faith of the then existing law." 25. This Court in *Hitendra Vishnu Tlalkur and Others v. State of Maharashtra and Others*, [1994] 4 SCC 602 has culled out the principles with regard to the ambit and scope of an amending Act and its retrospective operation as follows : (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective, either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication." [P.25 & 26]

2. The Apex Court, in *Commissioner of Income Tax versus Bazpur Co-Operative Sugar*, 1988 SCR (3)1034, while dealing with issue of "retrospectivity" have observed as under:

"It was submitted by Mr. Ahuja, learned counsel for the appellant (revenue) that the amendment of byelaw 50, although it was purported to be made with retrospective effect could, in fact, have no retrospective effect in law. It was submitted by him that a co-operative society governed by the Cooperative Societies Act, 1912 was not a body constituted by the said Act nor a statutory body. The power to make bye-laws was conferred upon the society by delegation under rules which themselves were framed by the Government in exercise of power delegated to the Government by the legislature under Section 43 of the aforesaid Act of 1912. It was submitted by him that as there was no delegation of any power on the respondent society to make byelaws with retrospective effect, it had no power to do so and the amendment of bye-law 50 made by the society, although purporting to be retrospective, could not be given any such effect. In support of this submission, Mr. Ahuja relied upon the decision of this Court in *Income-tax Officer, Alleppey v. M.C. Poonnoose & Ors.*, [1970] 1 S.C.R. p. 678 in which the Court held as follows:

"Where any rule or regulation is made by any person or authority to whom such

powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect (see Subba Rao J., in *Dr. Indramani Pyarelal Gupta v. W.R. Nathu & Others*, [1963] SCR 721-the majority not having expressed any different opinion on the point; *Modi Food Products Ltd., v. Commissioner of Sales Tax U.P.*, A.I.R. 1956 All. 356; *India Sugar Refineries Ltd. v. State of Mysore*, A.I.R. 1960 Mys. 326 and *General S. Shivedev Singh & Another v. The State of Punjab & Others*, [1959] P.L.R. 514.") The aforesaid observations have been cited with approval by this Court in *Hukum Chand etc. v. Union of India & Others*, [1973] 1 S.C.R. p. 896 where the Central Government was held to have acted in excess of its powers in so far as it gave retrospective effect to the Explanation to Rule 49 framed under the Displaced Persons (Compensation and Rehabilitation) Act, 1954, exercising the powers conferred by Section 40 of the Act. We may also refer here to the decision of this Court in *Cooperative Central Bank Ltd. & Ors. v. Additional Industrial Tribunal, Andhra Pradesh & Ors.*, [1970] 1 S.C.R.p. 205 where it has been stated by this Court as follows: "We are unable to accept the submission that the bye-laws of a co-operative society framed in pursuance of the provisions of the Act can be held to be law or to have the force of law. It has no doubt been held that, if a statute gives power to a Government or other authority to make rules, the rules so framed have the force of statute and are to be deemed to be incorporated as a part of the statute,. That principle, however, does not apply to bye-laws of the nature that a co-operative society is empowered by the Act to make. The bye- laws that are contemplated by the Act can be merely those which govern the internal management, business or administration of a society."

We may mention that the Act under which the byelaws were framed was the Andhra Pradesh Cooperative Societies Act, 1964.

25. After bestowing our thoughtful consideration qua facts and circumstances of the case, especially law settled by this Court in *Santosh Malhotra's* case (supra) and *Dhyan Singh's* case (supra) as also in *Geeta Devi versus State of H.P. & Another*, decided on 7.10.2016, which has attained finality, as we are informed that aforesaid judgment has not been challenged further, we find no illegality or infirmity in the order passed by Financial Commissioner (Appeals), wherein he has rightly held that there would be no application of the amending Act, 1994, qua General Power of Attorney and agreement, admittedly executed by respondent Sarvjot Singh in favour of G.S. Chopra on 25.6.1990/30.6.1990, which is prior to the date when amendment came into force i.e. 22.3.1995. Apart from above, this Court is also of the view that amending Act has come into operation with effect from 22.3.1995, prohibiting transfer of land by way of

agreement/Power of Attorney, is not retrospective, rather is prospective, for all intents and purposes, as such, agreement or Power of Attorney, if any, executed by respondents prior to amending Act, 1994, can not be said to be in violation of the provisions of Section 118 of the Act *ibid*.

26. In view of above, the petition is dismissed. Order passed by Financial Commissioner (Appeals) is upheld. No order as to costs.

27. Pending applications are disposed of.