

(1998) 07 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 406 of 1992

State of Himachal Pradesh

APPELLANT

Vs

Harnama

RESPONDENT

Date of Decision : 03-07-1998

Acts Referred:

Himachal Pradesh Ceiling on Land Holdings Act, 1972 — Section 11, 12, 18
Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 104

Citation : (1999) 1 ShimLC 38

Hon'ble Judges : D. Raju, C.J

Bench : Single Bench

Advocate : M.L. Chauhan, Assistant Advocate General, for the Appellant; H.K. Bhardwaj, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The Respondents-State, who succeeded before the trial Court, but lost before the First Appellate Court is the Appellant in the above second appeal. The Plaintiff in Civil Suit No. 93/1984 and the Respondent herein filed Civil Suit on the file of the Subordinate Court at Una for a declaration that he is the owner in possession of the land measuring 12 Kanals 14 Marlas as-described fully in the schedule to the plaint. The case of the Plaintiff was that the land forming a part of large extent of land comprised in Khasra No. 943 situated in village Changar has been owned by Smt. Phulmu Devi and others has been in the possession and occupation of Kirpa Ram son of Sarda as non-occupancy tenant on payment of Batai since long, that the said Kirpa Ram died in 1976 and pursuant to the Will dated 20.11.1968 executed by his predecessor-in-interest that he acquired the non-occupancy tenancy rights and with the coming into force of the H.P. Tenancy and Land Reforms Act on 3.10.1975 as also by virtue of the Will executed by his predecessor-in-interest, as also the Plaintiff became entitled to all the rights of the original land owner and consequently the revenue records showing the State of Himachal Pradesh as the owner in possession of the suit land are illegal. It was also claimed that the Plaintiff's predecessor-in-interest was in physical possession

and enjoyment of the property and the mutation in the revenue records were also without any notice or opportunity to them.

2. The State opposed the claim of the Plaintiff by filing a written statement contending that though previously the suit land had been owned by Smt. Phulmu Devi and others and that it was in possession of Kirpa Ram son of Sarda as non-occupancy tenant inasmuch as the said item of land had been shown as surplus in the hands of the original owner and taken over under the provisions of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (hereinafter referred to as "the Ceiling Act"), and the Rules made thereunder, and by virtue of mutation No. 491 dated 30.9.1975 the land in question stood vested with the State free from all encumbrances and including the rights, if any, of the Plaintiff as non-occupancy tenant over the suit land. It is the further plea of the State that the suit land having been in possession of the State as owner even prior to 30.10.1975 the Plaintiff has no right or locus standi to file the suit. Certain other objections, which are unnecessary for the purpose of this appeal have also been taken by the State.

3. Thereupon the suit was tried and the learned trial Judge by his judgment and decree dated 3.9.1988 dismissed the suit holding that in view of the possession shown to have been taken of the property and the mutation of revenue records effected prior to the date on which the provisions of Tenancy Act came into force, the Plaintiff has failed to substantiate his rights claimed in the property as owner. Aggrieved the Plaintiff perused the matter on appeal before the District Court, Una. The learned First Appellate Judge chose to resppreciate the facts on record and ultimately came to the conclusion that no credence could be given to the mutation claimed to have been carried-out on 30.9.1975, that the Plaintiff or the person in the physical possession of the land could not be said to have been properly and legally dispossessed so as to attract the provisions of Section 11 of the Ceiling Act and consequently the State cannot take advantage of the provision engrafted for, the destruction of the rights of the owner and providing for vesting of the property absolutely free from all encumbrances, with the State, Hence, the learned First Appellate Judge set aside the judgment and decree of the learned trial Judge and while allowing the appeal decreed the suit, as prayed for.

4. Hence, the above appeal at the instance of the State. The appeal was admitted on the following substantial questions of law, as formulated, which were said to arise for consideration by this Court in this appeal:

1. Whether the suit land has vested in the State of HP. under the H.P. Ceiling on Land Holdings Act, 1972 free from all encumbrances.

2. Whether Civil Court has jurisdiction to try and entertain Civil Suit in view of bar created u/s 18 of the H.P. Ceiling on Land Holdings Act, 1972 (Act No. 19 of 1973).

3. Whether the suit is barred by limitation.

4. Whether the proprietary rights in respect of Government land cannot be granted in view of the amendment carried out in Section 104 of H.P. Tenancy and Land Reforms Act, 1972.

5. The learned Counsel appearing for the State while elaborating the substantial questions of law formulated vehemently contended that the learned First Appellate Judge committed a serious error of law in not only misconstruing the relative scope and operation of the provisions contained in Section 11 of the Ceiling Act and Section 104 of the Tenancy Act, but also failed to advert to the proviso inserted with retrospective effect by the amending Act No. 6 of 1968 stipulating that nothing contained in Section 104 of the Tenancy Act shall apply to such land which is either owned by or is vested in the Government under any law, whether before or after the commencement of this Act and is leased out to any person and consequently the judgment and decree calls for interference in this appeal. Argued the learned Counsel for the State further that the conclusion arrived at by the learned First Appellate Judge about the credibility and the legal consequence flowing from the mutation of the revenue records cannot be approved and the authorities of the State having taken possession from the owner of the land, who declared the land in question to be surplus under the Ceiling Act after paying compensation the rights acquired by virtue of the vesting provision enacted in Section 11 of the Ceiling Act cannot be defeated by applying the provisions of Section 104 of the Tenancy Act and on this ground also the judgment of the learned First Appellate Judge warrants interference in this appeal.

6. Per contra, learned Counsel for the Respondent while adopting the reasoning of the learned First Appellate Judge to sustain the judgment and decree passed in favour of the Respondent contended that there is no error of law or any vitiating circumstance in the judgment to warrant the interference of this Court in the second appeal. The learned Counsel appearing on either side invited my reference to some of the earlier decided cases in support of the respective stand taken by them.

7. The decision in *Devi Chand v. State* 1994 (4) S.L.J. 2926, is that of a learned Single Judge of this Court, wherein the respective nature of the proviso to Section 104 came up for consideration and the learned Single Judge expressed the view that the proviso did have retrospective effect. In my view, this decision has no direct relevance to the peculiar facts and circumstances of the case, in which the question of vesting u/s 11 of the Ceiling Act itself is in dispute and controversy.

8. In the decision in *Daulat Ram etc. v. The State of Himachal Pradesh etc.* ILR 1978 H.P. 742, yet another learned Single Judge of this Court expressed the view, while construing the effect of Section 104 of the Tenancy Act that all rights of land owner stand vested in the tenant free from all encumbrances automatically from the date of notification or from the date of publication of the rules, under the said Act.

9. I have carefully considered the submissions of the learned Counsel appearing on either side. In my view, an answer to the substantial question of law No. 1 formulated in the case itself would suffice to give a quietus to the controversy, if answer on the said question has to be against the State. Hence, the said issue may be taken up for consideration initially. Section 11 of the Ceiling Act enacts that the surplus area of a person shall, on the date on which possession thereof is taken by or on behalf of the State Government be deemed to have been acquired by the State Government for a public purpose on payment of amount thereafter provided and all rights, title and interests (including the contingent interest, if any) recognised by any law, custom or usage for the time being in force, of all persons in such area shall stand extinguished and such rights, title and interests shall vest in the State Government free from any encumbrance. Consequently, the vesting with consequent extinguishment of all rights free from any encumbrance of any interest of all persons becomes operative and effective only on the date on which the possession of the land in question is taken by or on behalf of the State Government. The act or the factum of taking possession, therefore, becomes a condition precedent for the very provision relating to vesting to take effect. Section 12 of the Ceiling Act provides that the Collector may, by order in writing, at any time after an area becomes surplus, direct the person in possession of such area to deliver possession thereof within ten days of the service of the order on him to such person as may be specified in the order and if such person against whom a direction is issued omits to comply with the direction, enables the Collector or competent authority to take possession of the surplus land by even using for the purpose such force, as may be necessary. The facts on record go to show that no such order was passed directing the person in possession, either the predecessor-in-interest of the Plaintiff or the Plaintiff who were in possession of the property at all relevant point of time, to deliver possession or gave them any opportunity and the Plaintiff and his predecessor-in-interest who have been in indisputable possession of the property do not appear to have been apprised of the proceedings or proposal to take over the possession or the actual taking over of the possession of the properties in their possession. In view of this vital lapse which undermines the efficacy of the possession said to have been taken and the legality of the mutation of revenue records, the inevitable conclusion that follows is that the statutory vesting as envisaged u/s 11 of the Ceiling Act has not taken place in this case. If that be the legal consequence of the factual finding recorded by the learned First Appellate Court, which has the approval of this Court also, by virtue of the provisions of the Tenancy Act on and from 3.10.1975, the predecessor-in-interest of the Plaintiff himself has become the owner of the property and by virtue of the Will executed by him, the Plaintiff has succeeded to such rights of his predecessor-in-interest. I am unable to agree with the submissions of the learned Counsel for the State that having regard to the retrospective nature of the proviso to Section 104 of the Tenancy Act, it is even now open to them to have recourse to take possession and by virtue of the provisions of the proviso, the question of the Plaintiff acquiring rights as owner of the property does not arise. In my view the

fact that the land in question has been notified as surplus or that the original owner of the land has been paid the compensation will be of no avail to the State if before the date of vesting actually taking place the non-occupancy tenant in possession of the land has acquired the rights of the owner in which case there is no scope for now pursuing action under the Ceiling Act to take possession of the lands treating the lands to be that of the original owner. It is brought to my notice that P.K. Palli, J. also has taken a similar view in State of Himachal Pradesh v. Harbans Lal and Ors. RSA No 81/92, dated 23.3.1998.

10. In view of the above conclusion of mine on the substantial question of law No. 1, a decision on the other substantial questions of law formulated becomes otiose.

For all the reasons stated above, the second appeal fails and stands dismissed No costs.