(2010) 04 SHI CK 0210

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 273 of 2006

State of H.P. and Another APPELLANT

Vs

The Shivalik Cooperative and Others RESPONDENT

Date of Decision : 22-04-2010

Acts Referred:

Himachal Pradesh Tenancy and Land Reforms Act, 1972 — Section 118, 118(1), 118(2), 61

Himachal Pradesh Tenancy and Land Reforms Rules, 1975 — Rule 38A

Citation : (2010) 04 SHI CK 0210

Hon'ble Judges : Dev Darshan Sood, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dev Darshan Sud, J.—The State has preferred this writ petition against the orders passed by the Financial Commissioner affirming the orders passed by the Commissioner accepting the appeal of the respondents u/s 61 of the H.P. Tenancy and Land Reforms Act, 1972, (hereinafter referred to as the ''Act?) preferred against the orders passed by the Collector, Solan, directing confiscation of the land of M/s. Sandhu Hotels Pvt. Ltd.

2. The brief facts of the case are that by an order dated 29.10.1991 (Annexure P-2), the Collector, Solan, decided proceedings u/s 118 of the Act against M/s. Sandhu Hotels Pvt. Ltd. and M/s. Shiwalik Cooperative House Building Society on the allegations that permission was granted to M/s. Sandhu Hotels Pvt. Ltd. vide Annexure P-1, dated 24.1.1984 u/s 118 of the Act read with Rule 38-A of the H.P. Tenancy and Land Reforms Rules, 1975, for purchase of land to be utilized for the purpose as stated therein. The Collector on an interpretation of the provisions of Section 118 of the Act held that the land was transferred by M/s. Sandhu Hotels Pvt. Ltd. in favour of M/s. Shiwalik Cooperative House Building Society without permission of the Government and that the Cooperative Society had raised construction thereon. The Collector notes that no sale deed had been

executed. It is not clear from the record as to whether any agreement to sell etc. has been proved on the record or not. The Cooperative Society appealed to the Commissioner who by his order Annexure P-3 holds that the amendment in Section 118 of the Act, which has been used by the Collector for ordering confiscation of the land, was not retrospective but was prospective i.e. effective from the date when the amendment was made on 14th April, 1988. The Commissioner also notes:

10. About the point regarding questionable trading in land etc. the intention of the learned Collector is loudable but it has to be noted that as per record no action as yet has been taken by Government to revoke/modify the original sanction (Ref. letter No. 2F(10)96/83 dated 17.1.1984) in favour of the party.

The State being aggrieved by the order of the Commissioner, appealed to the Financial Commissioner. While considering the respective contentions of the parties, the Financial Commissioner notes that the main question for determination was as to whether M/s. Sandhu Hotels Pvt. Ltd. had been given permission to purchase the land for construction of a hotel and had violated the provisions of the Act and entered into an agreement to sell with respondent M/s. Shivalik Cooperative House Building Society. Financial Commissioner holds that the Commissioner has rightly come to the conclusion that the amendment has prospective and not retrospective effect. This amendment was not applicable before 14.4.1988. The relevant portion of the order reads:

It is noteworthy that there exists no provision u/s 118 of the Principal Act to enforce the utilization of land purchased with prior permission of the State Govt. for a purpose for which the permission was sought. The relevant provisions read as under:--

Section 118(2) Nothing in Sub-section (1) shall be deemed to prohibit the transfer of any land by an agriculturist in favour of:

(f) Co-operative Societies and (a Bank)

(g) a non-agriculturist within the limits of municipal corporations, municipal committees, notified area committees for any one of the purposes, i.e. for construction of a dwelling house, a shop or commercial establishment or office or industrial unit subject to the condition that transfer of land for such purposes shall exceed:

(i) in case if a dwelling house-500 square meters;

(ii) in case if a shop, commercial establishment or office-300 square metrs.

(iii)in case of an industrial unit such area as may be certified by the Department of Industries of the State Government:

(h) a non-agriculturist with the permission of the State Government (for the purposes to be prescribed).

The amendment effected in the said Act vide the Act No. 15 of 1976 published in the R.H.P. Extra Ordinary on 26th April 1976 too carried no such provisions. The relevant amendment read as under:

In Section 118 of the principal Act:

(a) in Clause (f) of Sub-section (2) for the words, brackets and figures "new Banks constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970" the words "a

(b) after Clause (f)

In the instant case, the learned Collector has based his order on the amendment carried out on vide Act No. 6 of 1988 dated 14.04.1988 vide which the second proviso to Clause (i) of Sub-section 2 of Section 118 was introduced which specifically provides for utilization of land by a non agriculturist purchasing such land with prior permission of the State government for the same purpose the permission to purchase was sought for within two years from the date of the said amendment. Though the Act No. 6 of 1988 has been deemed to come into force from the date of commencement of the H.P. Tenancy and Land Reforms Act, 1972, the relevant second proviso to Clause (i) of Sub-Section 2 of Section 118 has been clearly mentioned to have come into force ?at once?. The said proviso reads as under: "Provided further that a non-agriculturist in whose case permission to purchase land is granted by the State Government, shall put the land to such use for which the permission has been granted, within a period of two years or a further such period, not exceeding one year, as may be granted by the State Government, to be counted from the day on which the deed covering the sale of the land is registered and if he fails to do so, the land so purchased by him shall vest in the State Government free from all encumbrances". The learned Commissioner has rightly interpreted the amended provision in this regard after deliberating upon the same at the length.

The order has been reproduced in some detail as it covers the controversy before the Financial Commissioner. While disposing of the appeal, the Financial Commissioner directs:

The learned Distt. Collector, if he deems fit, may enquire into the aspect of the land having been transferred to the respondent No. 1 by the respondent No. 2. In case he comes to the conclusion after conducting such an inquiry that transfer of the land in dispute has in fact occurred he may initiate appropriate legal action under law. Further, the learned Collector may, in such an eventuality, realize such stamp duty/registration fee as payable and penalize the defaulter for breach of law.

The case was heard at length by me on a number of points raised by the learned Additional Advocate General.

I cannot accept the contention that the amendment in the statute is retrospective. Both the Commissioner and the Financial Commissioner have come to the correct conclusion. Moreover, if the basic grievance of the State is that the land has been transferred contrary to the provisions of the Act, the Financial Commissioner has not foreclosed an inquiry into this aspect. There is, thus, no merit in this writ petition which is dismissed. There shall be no order as to costs. All interim orders are vacated. All miscellaneous applications are disposed of.

