

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA.

CWP No. 170 of 2003

Judgment reserved on : 25.6.2007

Date of Decision : July 31, 2007

Partap Singh

...Petitioner.

Versus:

Damodar Dass and others

...Respondents.

Coram:

The Hon'ble Mr. Justice Sanjay Karol, Judge.

*Whether approved for reporting?*¹ Yes.

For the petitioner : Mr. Bimal Gupta, Advocate.

For respondents 1(a) : Mr. G. R. Palsra, Advocate.
to 1(d) & 2(a) to 2(c)

For respondents 3 to 8 : Mr. J. K. Verma, Dy. Advocate
General.

Sanjay Karol, J.

The present writ petition has been filed inter alia praying the following relief :-

“(i) That order dated 7.1.1986 Annexure P-1, order dated 22.5.1992 Annexure P-5 and order dated 8.7.2002 Annexure P-6 may kindly be set aside and quashed.

(ii) The petitioner may kindly be held entitled for resumption of aforesaid land in question under Section 104 of the H.P. Tenancy and Land Reforms Act 1972 read with H.P. Tenancy and Land Reforms Rules 1975 and further an

¹ Whether reporters of Local Papers may be allowed to see the judgment?

appropriate writ of mandamus may be issued to respondent No.7 to pass appropriate order for resumption of land in question in favour of the petitioner or in the alternative consider the case of the petitioner for resumption of the said land in accordance with law.”

Brief facts giving rise to filing of the present writ petition are as under:-

On 26.9.1971, one Shri Roshan Lal alias Gian Chand transferred ownership rights of the land in question in favour of petitioner Partap Singh, minor having born on 19.7.1967. With the enactment of The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (hereinafter referred to as 'the Abolition Act'), respondents 1 & 2 (hereinafter referred to as the private respondents), as tenants, moved an application dated 7.9.1971, under Section 11 of the Abolition Act, seeking to acquire the right, title and interest of the petitioner, land owner. However, no final decision on the application could be taken due to petitioner's minority and the same was kept pending.

With the enactment of the H.P. Tenancy and Land Reforms Act (hereinafter referred to as 'the Tenancy Act'), and enforcement thereof w.e.f. 21.2.1971, by virtue of the provisions of Section 126 of the Tenancy Act, the Abolition Act except to the extent provided therein, stood repealed.

Subsequently, petitioner having attained majority on 19.7.1985, moved an application for resumption of land under Section 104 of the Tenancy Act, but before any decision could be taken on the same, the private respondents application dated 7.9.1971, stood decided by the

Compensation Officer, duly appointed under the Abolition Act, vide order dated 7.1.1986, wherein it was so held that petitioner's proprietary rights in respect of Khasra Numbers 1032, 1040, 1041, 1043, 1045, 1048, 1061, 1063, 1066, 1069, 1071 and 1072, Kita 12 measuring 0-47-80 Hects. situated in village Chuku, Tehsil Sarkaghat, H.P. stood acquired in favour of the private respondents. Petitioner, of course, was to be paid compensation as stipulated under the Act. Importantly, this order was not assailed by the petitioner at any point of time.

However, on the petitioner's application dated 11.9.1985, the Land Reforms Officer-cum-Assistant Collector Ist Grade, Sarkaghat, passed an order dated 6.8.1988 directing that the aforesaid order dated 7.1.1986 passed under the Abolition Act, was required to be reviewed and for the said purpose, the matter was sent to the Collector, Sarkaghat seeking his permission under the Tenancy Act, who vide his order dated 1.9.1988 accorded permission to review the same. The private respondents assailed this order in an appeal under the Tenancy Act, which was rejected by the Collector (ADM), Mandi in terms of his order dated 28.2.1991, which in turn was further assailed by the private respondents and in terms of his order dated 22.5.1992, the Divisional Commissioner, Mandi, set aside the orders dated 28.2.1991 and 6.8.1988 passed under the Tenancy Act, upholding the order dated 7.1.1986 passed by the Compensation Officer under the Abolition Act. Aggrieved by the same, the petitioner preferred a revision before the Financial Commissioner (Appeals), which was dismissed in terms of impugned order dated 8.7.2002.

Learned counsel for the petitioner has argued that with the repealing of the Abolition Act, the petitioner was well within his rights to resume the land in exercise of his rights under the provisions of the Tenancy Act and Rule 21 of the Rules framed under the Tenancy Act; The authorities below have seriously erred in not considering that the provisions of the Tenancy Act alone were applicable on the date of decision, therefore, no order could have been passed under the Abolition Act. In view of Section 63 of the Tenancy Act, the Revenue Officer was well within his rights to review the order. He has relied upon ***Bhajan Lal vs. State of Punjab and Others*** (1971(I) SCC 34) & ***Chinti vs. Trilok Chand and Others*** (1982, SLJ 94) to support his contention.

Per contra, learned counsel for the private respondents has argued that in order to defeat the object of the Abolition Act, Shri Roshan Lal fraudulently transferred his land by way of gift dated 26.9.1971 in favour of the petitioner (his nephew), the said transfer is illegal in view of ratio of law laid down in ***Varinder Singh vs. Reshmo*** (1977 SCJ 264); The petitioner had a right to appeal under the Abolition Act which he did not exercise; In any event in view of the decision of this Court in ***Shankar Singh and Others vs. Santi and others*** (1979 SLC 248), the authorities rightly kept the application of the private respondents pending till the petitioner attained the age of majority.

For the sake of convenience and ready reference, the relevant provisions of the Abolition Act and the Tenancy Act are

reproduced as under:-

Abolition Act

"3. (1) A tenant:-

(a) who at the commencement of this Act has for a period of not less than twelve years been occupying land paying no rent therefor beyond the amount of land revenue thereof and the rates and cess for the time being chargeable thereon; or.....

(c) who has broken up land for cultivation, has a right of occupancy in the land so occupied or in the land so broken up for cultivation.

11. (1) Notwithstanding any law, custom, or contract to the contrary a tenant other than a sub-tenant shall, on application made to the compensation Officer at any time after the commencement of this Act, be entitled to acquire, on payment of compensation, the right, title and interest of the landowner in the land of the tenancy held by him under the landowner.

Provided that a tenant not having a right of occupancy shall not be entitled to acquire the right, title and interest of the landowner in the land of the tenancy from which he is liable to ejection under clause (d) or clause (f) or clause (g) of sub section (1) of section 54.

(2) Nothing contained in sub section (1) shall apply to a landlord, if he has no other means of livelihood and is a minor, widow or a person suffering from physical or mental disability incapable of earning his livelihood. In the case of a minor, sub section (1) shall not apply during his minority and in other cases for his life time.

104. An appeal shall lie to the District Judge from any order of the Compensation Officer and a second appeal from the decision of the District Judge shall lie to the Judicial Commissioner.

Tenancy Act

63. Review by Revenue Officers:- (1) A Revenue Officer, as such may either of his own motion or on the application of any party interested, review and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessors in office:

Provided as follows:-

(a) when a Commissioner or a Collector thinks it necessary to review any order which he has not himself passed, and when the Revenue Officer of a class below that of Collector proposes to review any order whether passed by himself or by any of his predecessors in office, he shall first obtain the sanction of the Revenue Officer or Collector to whose control he is immediately subject;.....

(3) An appeal shall not lie from an order refusing to review, or confirming on review, a previous order.

104. Right of tenant other than occupancy tenant to acquire interests of landowner:- (1) Notwithstanding anything to the contrary contained in any law, contract, custom or usage for the time being in force, on and from the commencement of this Act, if the whole of the land of the landowner is under non-occupancy tenants, and if such a landowner has not exceeded the right of resumption of tenancy land at any time since January 26, 1955, under any law as in force.....

(3) All rights, title and interest (including a contingent interest, if any) of a landowner other than a landowner entitled to resume land under sub section (1) shall be extinguished and all such rights, title and interest shall with effect from the date to be notified by the State Government in the Official Gazette vest in the tenant free from all encumbrances.....

(8) Save as otherwise provided in sub section (9) nothing contained in sub section (1) to (6) shall apply to a tenancy of a landowner during the period mentioned for each category of such landowners in sub section (9) who:-

(a) is a minor or unmarried woman, or if married, divorced or separated from husband or widow.

(9) In the case of landowners, mentioned in clauses (a) to (d) of sub section (8), the provisions of sub sections (1) to (6) shall not apply:-

(a) In case of a minor during his minority and in case of other persons mentioned in clauses (a) and (b) of sub section (8) during the life time.....

126. Repeals:- With effect from the commencement of this Act;

(a) The Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (15 of 1954), are hereby repealed in their application to respective areas of Himachal Pradesh;

(b) so much of any other law as is inconsistent with the provisions of this Act shall be deemed to be and is hereby repealed.

127. Savings:- (1) The repeal of the enactments referred to in clauses (a) and (b) of the last proceeding section shall not affect their previous operation;

(2) Subject to the provisions of sub section (1) anything done or any action taken including any appointment, delegation or transfer made, notification, proclamation, order, instruction or direction issued, authorities and powers conferred, rights acquired and liabilities incurred, rule, regulation, form or scheme framed, date, time and place appointed and other things done, under the repealed Act, or law shall:-

(a) be deemed to have been done or taken under the corresponding provisions, if any, of this Act;

(b) continue in force unless and until directed otherwise or superseded by anything done or any action taken under this Act by the State Government or by other competent authority;

- (3) Notwithstanding the repeal of the enactments mentioned in section 126, all suits, applications or other proceedings pending disposal at the commencement of this Act shall be disposed of in accordance with the provisions of the said Acts as if these Acts had not been repealed. "

(Emphasis supplied)

The Abolition Act was enacted with an object to provide for the Abolition of the Big Landed Estates and to reform the law relating to tenancy. It came into force w.e.f. 29.1.1955. Section 3 gave the tenant a right of occupancy in the land so occupied. By virtue of Section 11, subject to the restrictions contained therein, the tenant could move an application to acquire the right, title and interest of the land owner in the land of the tenancy held by him. It is clear that the private respondents, as tenants, were entitled and had a right to acquire the land of tenancy but, however, no order could be passed till the time the petitioner was minor. The petitioner did not have any right of resumption under the Abolition Act and the only remedy was to file an appeal against the order passed by the Compensation Officer. Similarly, the petitioner's proprietary rights to resume by virtue of provisions of Section 104 of the Tenancy Act, were deferred during his minority.

The application of the private respondents, which was kept pending, was to be disposed of in accordance with the provisions of the Abolition Act as if it had not been repealed. In ***Shankar Singh*** (supra), this Court has held that in the case of minor, the provisions of Section

11(1) of the Abolition Act shall not apply during his minority but would automatically apply upon the minor land owner attaining majority. It would not be necessary to dismiss such application of the tenant on the ground that the application could not have been originally made because the land owner was minor at the relevant time. In this view of the matter, the respondents authorities had rightly kept the application pending till the time the petitioner attained majority.

Based on the decision of ***Varinder Singh*** (supra), it can be safely held that since the private respondents application was prior in point in time and was pending as on the date of the transfer of land by Roshan Lal in favour of his nephew Partap Singh by virtue of a gift, petitioner could not have taken shelter of the provisions of Section 11(2) of the Abolition Act. Obviously, the transfer was to defeat the purpose and the object of the Act as also the rights of the private respondents. Be that as it may be, in any case, the private respondents application was correctly decided by the Compensation Officer in terms of his order dated 7.1.1986 in view of Section 127(3) of the Tenancy Act.

The application for the grant of proprietary rights was pending and, therefore, the Compensation Officer in terms of his order dated 7.1.1986 rightly conferred proprietary rights of the land under dispute to the private respondents. The petitioner choose not to prefer an appeal before the District Judge.

The challenge to the rights of the private respondents is only on the ground that the petitioner had subsequently acquired a right under the Tenancy Act.

Importantly, for the land owner, no right of resumption is provided for in the Abolition Act. Section 104, in itself does not give any right to the tenant to resume the land. A careful reading of the provisions would show that if the land owner has not exercised the right of resumption of tenancy land at any time since January, 26, 1955, under any law as in force then the land owner shall be entitled to resume the land as specified in the said Section. Admittedly, the petitioner had no right of resumption under any law as on the date of the commencement of the Tenancy Act, therefore, in my view, provisions of Section 104 cannot be pressed to create a right of resumption by the petitioner.

Simply because an application for resumption though misconceived, was filed on 11.9.1985, in my view, there was no bar for the Compensation Officer to decide the application under the Abolition Act to confer proprietary rights in accordance with law.

Learned counsel for the petitioner has sought to argue that in view of the inconsistent provisions of Section 11 of the Abolition Act and Section 104 of the Tenancy Act, by virtue of Section 126 (b) of the Tenancy Act, the right accrued to the petitioner shall prevail over the rights of the private respondents. The submission is fallacious. As already held, no right accrued to the petitioner under the Tenancy Act, therefore, the argument needs to be rejected.

The ratio of law in the judgments referred to by the learned counsel for the respondents in ***Bhajan Lal*** (supra) and ***Chinti*** (supra) infact is contrary to the submission made on behalf of the petitioner.

In my view, the judgments infact support the case of the private respondents. In ***Chinti*** (supra), the Court was considering the case where Chinti moved an application under Section 11 of the Abolition Act for acquisition of proprietary rights on 4.4.1967. During the pendency of the said application, in the proceedings for ejectment for recovery of arrears of rent, initiated by the land owner, a decree for ejectment dated 30.12.1967 was passed. Chinti's application dated 4.4.1967 was dismissed on 28.9.1968 by the Compensation Officer on the ground that the petitioner had ceased to be a tenant. Relying upon the decision of the Apex Court in ***Bhajan Lal*** (supra), this Court held that the right of the tenant to acquire proprietary rights by any subsequent order of ejectment could not be defeated.

For all the aforesaid reasons, I am of the considered view that there is no illegality, infirmity or perversity in the impugned order and the present writ petition is consequently dismissed with costs quantified at Rs.5,000/-.

(**Sanjay Karol**),
Judge.

July 31, 2007.
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