

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

R.S.A. No. 327 of 1995

Decided on: May 31, 2007

State of H.P.

...Appellant.

VERSUS

Amar Nath

...Respondent.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting? Yes

For the appellant: Mr. K.D. Sood, Advocate.

For the respondent: Mr. Varinder Kumar Verma, Addl. A.G.

Surjit Singh, Judge (Oral)

Respondent Amar Nath, hereinafter called plaintiff, filed a suit for declaration that he was owner in possession of 57 Kanals 5 Marlas land, bearing Khasra No. 91 and 92, situate in Tika Sool, Tappa Kathera, as per Jamabandi for the year 1980-81, pertaining to the aforesaid Tika and that the land had not vested in the appellant / defendant (State of Himachal Pradesh) under the provisions of the H.P. Village Common Lands (Vesting & Utilization) Act, 1974. It was alleged that the suit land was part of the village common land and that it had been in continuing possession of the plaintiff from a date prior to

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

...2...

26.1.1950 and, therefore, it was not liable to vestment initially in the Panchayat under the provisions of the Punjab Village Common Lands (Regulation) Act, 1961 and thereafter in the State of Himachal Pradesh under the H.P. Village Common Lands (Vesting & Utilization) Act, 1974. The Punjab Village Common Lands (Regulation) Act, 1961 shall hereinafter be referred to as the Punjab Act and the H.P. Village Common Lands (Vesting & Utilization) Act, 1974 as the Himachal Act. It was alleged that the land being in possession of the plaintiff from a date prior to 26.1.1950 and thus having not vested initially in the Panchayat under the Punjab Act and subsequently in the State of Himachal Pradesh under the Himachal Act, on account of its being exempt from vestment in the Panchayat and then in the State, the plaintiff had become its owner.

2. The suit was contested by the appellant – State. It was alleged that the land had vested in the Panchayat under the Punjab Act and thereafter lease for a period of two years from Kharib 1971 to Rabi 1973 was created in favour of the appellant and that on the expiry of the lease a mutation was entered in favour of Panchayat indicating that on the expiry of the lease period, the possession had been taken back by the Panchayat. It was alleged that on coming into force of the Himachal Act, the property vested in the State of Himachal Pradesh. It was denied that the suit land had been in possession of the plaintiff at any point of time, except for a period of two years, i.e. from Kharif 1971 to Rabi 1973, for which period a lease was created in his favour by the Panchayat.

3. Trial Court, on the conclusion of the trial, dismissed the suit holding that the land had initially vested in the Panchayat under the Punjab Act and thereafter in the State of Himachal Pradesh under the Himachal Act and the plaintiff was not in possession of any portion of the land on or before 26.1.1950 and that he remained in possession of the

...3...

suit land only for a period of two years from 1971 to 1973 for which period lease was created in his favour by the Panchayat.

4. Appeal was carried by the plaintiff to the Court of learned District Judge. The learned District Judge though upheld the finding of the trial Court that the land had initially vested in the Panchayat and then in the State, yet it gave the finding that after the expiry of the lease the plaintiff continued to be in possession of the suit land and, therefore, unless he was ejected from the land under the orders of the Collector as per provision of Section 3(5) of the Himachal Act read with sub-rule (1) of Rule 3 of the rules framed under the Himachal Act, he was entitled to protect his possession and for protection of such possession he could seek an injunction from the Court. Consequently, the learned District Judge granted a decree of permanent prohibitory injunction in respect of the entire suit land in favour of the plaintiff restraining the appellant / defendant from dispossessing the plaintiff from the suit land. However, the appellate Court has observed that the decree will not preclude the appellant from initiating proceeding against the plaintiff under sub-section (5) of Section 3 of the Himachal Act and the rules framed there-under, and that it shall be open to the plaintiff to raise the plea before the Collector initiating such proceedings that the property had not lawfully vested in the Panchayat or the State.

5. I have heard the learned counsel for the parties and gone through the record. The plaintiff had set up a specific plea that the suit land having been in his possession from a date prior to 26.1.1950 and his possession having continued up to the date of the coming into force of the Punjab Act and thereafter the Himachal Act, the same (the suit land) was exempt from vestment initially in the Panchayat and thereafter in the State of Himachal Pradesh. This plea has been rejected both by the trial

...4...

Court and the first appellate Court. The concurrent finding of the two Courts below regarding rejection of this plea has not been challenged by the plaintiff by filing a cross appeal. Otherwise also, from the record it is borne out that the plaintiff had not been in possession of any portion of the suit land, not even an inch, prior to Kharif 1971, when the Panchayat created lease in his favour for a period of two years per note (1) recorded in the remarks column in the Jamabandi for the year 1966-67, copy Ext. D-13. The note reads that the lease was created in favour of the plaintiff in respect of a portion (and not the whole) of the suit land to the extent of 28 Kanals 13 Marlas after obtaining permission from the Collector. This lease was created by the Panchayat, who by then had become owner of the suit land by virtue of the enforcement of the Punjab Act and who was recorded as owner in the aforesaid Jamabandi (copy Ext. D-13). The second note on this Jamabandi reads that vide mutation No. 91, the lease that was created in favour of the plaintiff, had determined on account of lapse of lease period. In the Jamabandi for the year 1971-72, copy Ext. D-14, also there is a note in the remarks column that lease has come to an end on account of expiry of the lease period and mutation to this effect has been attested vide No. 91. That means as per these notes, lease created in favour of the plaintiff for a period of two years in respect of a portion of the aforesaid land bearing Khasra No. 91, was given effect vide mutation No. 87 and on the expiry of the lease period the lease came to an end and mutation to this effect was again entered and attested indicating that the lease having come to an end, the Panchayat resumed the possession.

6. In view of the above stated factual position, the first appellate Court was not right in holding that the plaintiff continued to be in possession of the suit land and was, therefore, entitled to protect his

...5...

possession till he was evicted by recourse to the provision of Section 3, sub-section (5) of the Himachal Act and the rules framed there-under. It may be noticed that after the mutation on the expiry of lease was attested in favour of the Panchayat, another mutation No. 101 was attested in favour of the appellant / defendant showing it as owner in possession of the suit land in terms of the provisions of the Himachal Act and thereafter it is the appellant / defendant whose name is figuring in the columns of ownership as also possession in the Jamabandis. Reference in this behalf may be made to Jamabandis for the year 1976-77 (Ext. D-15), 1980-81 (Ext. D-16) and 1985-86 (Ext. D-17). In any case when the plaintiff, as per finding of the learned District Judge, was in possession of the suit land as a lessee under the Panchayat and not as a landowner, the provision of sub-section (5) of Section 3 of the Himachal Act and rule 3 of the rules framed there-under, would not be applicable, because the aforesaid provision applies for taking delivery of the possession of land from the land-owner and not from the tenants or lessees settled by the Panchayat. No order passed by any authority under the provisions of the Himachal Act had been called in question and, therefore, substantial question No. 1, that is to say one of the questions on which the appeal was admitted, does not arise.

7. As an upshot of the above discussion substantial question No. 2 is answered in favour of the appellant / defendant. Consequently the appeal is accepted. The judgment and decree of the first appellate Court are set aside and those of the trial Court restored. Appeal stands disposed of accordingly.

May 31, 2007 (BC)

**(Surjit Singh)
Judge**