A LACCHMAN SINGH

v.

STATE OF H.P. AND ORS.

JANUARY 29, 2004

B [SHIVARAJ V. PATIL AND D.M. DHARMADHIKARI, JJ.]

Himachal Pradesh Ceiling on Land Holdings Act, 1972—Sections 9(2) and 10—Himachal Pradesh Tenancy and Land Reforms Act, 1972—Collector declaring that appellant had surplus area, in the absence of any objections from the appellant—Writ Petition challenging the order dismissed by High Court—Correctness of the order made by Collector challenged almost after 14 years before the Commissioner and not within the stipulated 60 days—On remands, Collector dismissed the appeal applying the principle of **res judicata** *referring to the order made in the writ petition—Writ petition before High Court dismissed—Held, the High Court having decided the question of surplus area in the earlier writ petition, the Division Bench of High Court was right in dismissing the subsequent petition—It was not open to the appellant to re-agitate the matter as to the surplus area before the Collector or the Commissioner or before the High Court in the subsequent writ petition—Argument that no opportunity of hearing was given to appellant has no substance—If the appellant was not the excess holder, nothing prevented him from justifying the same by filing objections before the Collector—It is a clear case of not availing of the opportunity given—Administrative law—Principles of natural justice.*

After The Himachal Pradesh Ceiling on Land Holdings Act, 1972 came into force, a draft statement under the Rules thereunder was served on appellant by the Collector stating that he had surplus area of 108.3 bighas and inviting his objections within 30 days. Appellant did not file any objection and the Collector passed an order on 14/7/1975 confirming surplus area of 108.3 bighas of the appellant. In the meanwhile, appellant was detained under MISA between the period from 8/7/75 to 1/1/77. On coming into force of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 w.e.f. 4/10/75, in the absence of resumption application, proprietary rights were conferred on the tenants under the Land Reforms Act. Subsequently, appellant filed civil writ petition no. 456 of 1976

challenging the aforesaid orders passed against him and also challenging the constitutional validity of certain provisions of the aforesaid Acts. The said petition was dismissed. A

Thereafter, appellant filed Misc. Revenue Appeal No. 161 of 1989 before the Commissioner challenging the order of the Collector holding that appellant had surplus area of 108.3 bighas. The fact regarding dismissal of an earlier writ petition was not brought to the notice of the Commissioner. The Commissioner remanded the case to the Collector. On remand, the Collector held that in view of the order of the High Court in the writ petition, claim of the appellant was barred by the principle of *res judicata*. Appellant's appeal before the Commissioner was dismissed. He again approached the High Court by way of a writ petition which was also dismissed. Aggrieved, the appellant filed CA 3486/98. Subsequently the appellant also filed CA 3487/98 against the earlier order of High Court in CWP 456/76. B C

On behalf of the appellant, it was contended in CA 3486/98 that the appellant was not at all excess holder of the land considering the fact that he had a major son; that appellant could not file objections to the draft statement as he was under detention during the period between 7/7/1975 to 1/1/1977; that in CWP 456/76 the question of determination of surplus area under the Act did not arise and any observation made in that order in the writ petition cannot affect the rights of the appellant as regards the surplus area; that the collector ought to have decided the case on merits and he could not have simply disposed of the case applying the principle of *res judicata* referring to the order made in CWP 456/1976 and that no authority had decided as to the entitlement of the appellant for two units taking note of the undisputed fact that the appellant had a major son. In CA 3487/98, it was contended that the order made by the Collector as regards surplus area was bad in law as it was done without giving opportunity of hearing as required under Section 9(2) of the Act. D E F

Dismissing the appeals, the Court G

HELD: 1.1. The Collector by the order dated 14.7.1975 declared that the appellant has surplus area of 108.3 bighas. This order was challenged only in the year 1989 before the Commissioner almost after 14 years. The appeal ought to have been filed within 60 days. Even if the appellant was under detention between the period from 8.7.1975 to 1.1.1977, appeal could have been filed immediately thereafter. Besides, the appeal could have been H

A filed through appellant's major son as writ petition was filed in 1976 by the appellant through him as GPA. Even after the dismissal of CWP No. 456 of 1976 on 3.7.1986, the appeal was not filed before the Commissioner for about 3 years. There is no good reason or explanation given by the appellant as to why filing of the earlier writ petition and the order passed on 3.7.1986 was not disclosed in the appeal filed before the Commissioner. B The appellant has suffered the order on 14/7/1975 having not challenged the said order for many years, which ultimately attained finality by the order dated 3.7.1986, passed in CWP No. 456 of 1976. Rights have accrued to the third parties and at this stage their rights also cannot be affected.

[1190-E-H; 1196-A; 1201-E]

C

1.2. The contention that only constitutional validity of the provisions of the Act was the subject matter of the CWP No. 456 of 1976 and other contentions relating to surplus land were not raised, also cannot be accepted. The Division Bench of the High Court in W.P.(C) No. 1519 of 1995 having examined this aspect recorded a finding that the question with D regard to the surplus area also came for consideration in earlier writ petition No. 456 of 1976. From the very order dated 3.7.1986 made in C.W.P. No 456 of 1976, it is clear that all the contentions sought to be urged in the second writ petition were urged on behalf of the appellant and they were rejected. Thus it is not possible to accept the contention E that the High Court did not decide the question of surplus area of the appellant. When the order of the High Court dated 3.7.1986 made in CWP No. 456 of 1976 had attained finality, the Division Bench of the High Court was right in holding that it was not open to the appellant to re-agitate the matter as to the surplus area before the Collector or the Commissioner or before the High Court in the writ petition.

F [1198-H; 1199-A-B; 1200-F-H]

2. The argument that opportunity was not given to the appellant as required under Section 9(2) of the Act, has also no substance. If the appellant was not the excess holder, nothing prevented him from justifying the same by filing objections when draft statement was served on him on G 24.3.1975 on a combined reading of Sections 9 and 10 of the Act and Rules 9 and 10 framed under the Act, it becomes clear that the opportunities given to file objections to the draft statement and also opportunity of hearing before issuing a final statement is one composite hearing, even otherwise, there was no reason as to why the appellant should not have H taken objection including as to denial of opportunity of hearing under

Section 9(2). It is not a case of not giving opportunity of hearing but a clear case of not availing of the opportunity given. [1201-A-D]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3486 of 1998.

From the Judgment and Order dated 10.3.97 of the Himachal Pradesh High Court in C.W.P. No. 1519 of 1995.

WITH

C.A.No. 3487 of 1998.

K.T.S. Tulsi, Anoop Choudhary, B. Datta, Rishi Malhotra, Prem Malhotra, J.S. Attri, Additional Advocate General for State of H.P., Naresh K. Sharma, E.C. Agrawala, Padam Dev Goverdhan, Mahesh Agarwal, Rishi Agrawal, R.S. Panwar and Vivek Yadav for the appearing parties.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (for brevity 'the Act') came into force on 22.11.1973. A draft statement was served on 24.3.1975 on the appellant by the Collector under Rules 9 and 10 of the Rules framed under the Act stating that he had surplus area of 108.3 bighas and that he could file his objections, if any, within 30 days. The appellant did not file any objection. The Collector passed the order on 14.7.1975 in the absence of any objection confirming the surplus area of 108.3 bighas of the appellant. The appellant was detained under MISA between the period from 8.7.1975 to 1.1.1977. An appeal could be filed against the order of the Collector dated 14.7.1975 within 60 days. Himachal Pradesh Tenancy and Land Reforms Act, 1972 (for short 'the Land Reforms Act') came into force on 4.10.1975. The appellant could apply for resumption of land under the provisions of the said Act to the extent he was entitled to, within one month from the date of application of Rules 6 from 4.10.1975. In the absence of resumption application, on 20.2.1976, proprietary rights were proposed to be conferred on the private respondents under the Land Reforms Act. Accordingly, on 22.6.1976, mutations of proprietary rights were sanctioned in favour of the tenants. On 20.10.1976, the appellant filed Civil Writ Petition No. 456 of 1976 in the High Court through his son Bhagat Singh, being a General Power of Attorney. In the said writ petition, constitutional validity of certain provisions of the Act and Land Reforms Act

A was challenged. Further, there was challenge to the orders against the appellant passed under both the aforesaid Acts. It may be stated here itself that the order dated 3.7.1986 dismissing the C.W.P. No. 456 of 1976 attained finality as its validity having not been challenged any further.

The appellants filed Misc. Revenue Appeal No. 161 of 1989 before the
B Commissioner (Shimla Division) challenging the correctness and validity of the order made by the Collector on 14.7.1975 holding that the appellant had surplus area of 108.3 bighas. It is to be noted that the appellant neither mentioned in the appeal nor brought to the notice of the Commissioner about his suffering an order of dismissal dated 3.7.1986 passed in C.W.P. No. 456
C of 1976. The Commissioner disposed of the appeal on 29.10.1990 remanding the case to the Collector to decide the proceedings as per the provisions of the Act looking to the pleading of the appellant that he had no excess holding on the appointed day and that the relevant records were not available. After remand, the Collector disposed of the case on 25.8.1992 rejecting the contentions of the appellant taking a view that the High Court having rejected
D the same contentions in C.W.P. No. 456 of 1976 by the order dated 3.7.1986, it was not open to him to consider the same contentions again, applying the principles of *res judicata*. The appellant filed appeal before the Commissioner again. The Commissioner, after hearing the learned counsel for the parties, by a detailed and reasoned order, concurring with the view taken by the
E Collector, dismissed the appeal on 22.12.1992. The matter did not rest at that. The appellant approached the High Court in the second round by filing Civil Writ Petition No. 1519 of 1995. A Division Bench of the High Court, after consideration of the rival contentions, concluded that the writ petition filed by the appellant was frivolous and ill-advised. Consequently, the writ petition was dismissed on 10.3.1997. Hence, the appellant is in appeal before this
F Court in Civil Appeal No. 3486 of 1998 against the said order of the Division Bench of the High Court.

After filing of the appeal, on 8.9.1997 the appellant took a short adjournment in this Court to enable the appellant to move an SLP against the earlier order dated 3.7.1986 passed by the High Court in C.W.P. No. 456 of
G 1976. It is thereafter, SLP was filed by the appellant against the order dt. 3.7.1986 made in the writ petition and the Civil Appeal No. 3487 of 1998 arises out of the same SLP.

Mr. K.T.S. Tulsi, learned Senior Counsel for the appellant in C.A. No.
H 3486 of 1998 contended that the appellant was not at all excess holder of the

land considering the fact that he has a major son born on 1.6.1944; the appellant could not file objections to the draft statement as he was under detention during the period 7.7.1975 to 1.1.1977. In C.W.P. No. 456 of 1976, only the constitutional validity of certain provisions of the Act was questioned; in that writ petition, the question of determination of surplus area under the Act did not arise; even otherwise, any observation made in that order in the writ petition cannot affect the rights of the appellant as regards the surplus area. His further submission was that when the appeal filed by the appellant was allowed by the Commissioner on 29.10.1990 holding that the appellant was entitled to two units and the case was remitted to the Collector, the Collector ought to have decided the case on merits in the light of the observations made in the order of the Commissioner; he could not have simply disposed of the case applying the principle of *res judicata* referring to the order made on 3.7.1986 in C.W.P. No. 456 of 1976; the Commissioner also committed an error in dismissing the appeal confirming the order of the Collector. He also submitted that the Division Bench of the High Court was not right in negativing the contentions of the appellant in the light of the order made in the earlier C.W.P. No. 456 of 1976 when the question of determining surplus area did not arise in that writ petition. He made grievance that no authority has decided as to the entitlement of the appellant for two units taking note of the undisputed fact that the appellant has a major son.

Mr. Anoop Choudhary, learned Senior Counsel for the appellant in C.A. No. 3487 of 1998, while supporting the submissions made by Mr. Tulsi, made further submissions that the Collector was wrong in presuming that the appellant was excess holder; no declaration is required to be made by the Collector under the Act as regards surplus area and question of serving draft statement would arise only in case where a return is filed by excess holder. He drew our attention to certain provisions of the Act in support of his submissions. He added that even otherwise the order made by the Collector as regards surplus area was bad in law as it was done without giving opportunity of hearing as required under Section 9(2) of the Act; the draft statement said to have been served on 24.3.1975 was under Section 10 of the Act; the High Court committed an error in taking the view that the draft statement served on the appellant on 24.3.1975 was sufficient service of notice. He also submitted that the appellant was not legally obliged to reply to the draft statement served on him on 24.3.1975; failure to give reply did not affect the appellant's rights; the appellant is also not paid compensation till date and the possession of lands could not be taken without payment of compensation.

A The learned counsel for the respondents made submissions in support of the impugned orders for the ver / reasons stated therein. They also submitted that on 14.7.1975 when the Collector passed the order declaring that the appellant had surplus area of 108.3 bighas, son of the appellant was major; neither the appellant nor his major son challenged the said order within 60 days; the appellant in C.W.P. No 456 of 1976 did not state that he was not B excess holder; the appellant was guilty of suppression of material fact, i.e., passing of the order in C.W.P. No. 456 of 1976 on 3.7.1986 when he filed appeal before the Commissioner in 1989; the order of the Collector dated 14.7.1975 was challenged before the Commissioner after about 14 years and after 3 years from the date of the order made in C.W.P. No. 456 of 1976; C nothing prevented the appellant from challenging the order of Collector dated 14.7.1975 earlier on all the grounds that were available, which are sought to be urged now including the ground that he was not excess holder. It was not open to the Collector or the Commissioner in the second round to pass an order contrary to the order dated 3.7.1986 made in C.W.P. No. 456 of 1976. The Division Bench of the High Court in W.P. No. 1519 of 1995 on proper D consideration of all aspects rightly rejected the contentions of the appellant. According to learned counsel, on fact and circumstances of the case and looking to the conduct of the appellant, this Court may not interfere with the impugned orders exercising jurisdiction under Article 136 of the Constitution.

E We have carefully considered the above submissions of the learned counsel for the parties in the light of the facts found and the relevant provisions of law. The Collector by the order dated 14.7.1975 declared that the appellant has surplus area of 108.3 bighas. This order was challenged only in the year 1989 before the Commissioner almost after 14 years. The appeal ought to have been filed within 60 days. Even if the appellant was under detention F between the period from 8.7.1975 to 1.1.1977, appeal could have been filed immediately thereafter. There was no need to wait for 14 years. Added to this, appellant had major son, appeal could have been filed through him as writ petition was filed in 1976 by the appellant through his son as GPA. Even after the dismissal of C.W.P. No. 456 of 1976 on 3.7.1986, the appeal was G not filed before the Commissioner for about 3 years. There is no good reason or explanation given by the appellant as to why filing of the earlier writ petition and the order passed on 3.7.1986 was not disclosed in the appeal filed before the Commissioner. The obvious inference that can be drawn is that the appellant having suffered the order in the writ petition did not disclose the same. If disclosed, it could have gone against him. Possibly, the H Commissioner would not have passed an order of remand if the order dated

3.7.1986 passed in C.W.P. No. 456 of 1976 was placed before him. The contention that only constitutional validity of the provisions of the Act was the subject matter of the C.W.P. No. 456 of 1976 and other contentions relating to surplus land were not raised, also cannot be accepted. The Division Bench of the High Court in W.P.(C) No. 1519 of 1995 having examined this aspect recorded a finding that the question with regard to the surplus area also came for consideration in earlier writ petition No. 456 of 1976. From the very order dated 3.7.1986 made in C.W.P. No. 456 of 1976, it is clear that all the contentions sought to be urged in the second writ petition were urged on behalf of the appellant and they were rejected. In the order dated 3.7.1986, the High Court dealing with the surplus area of the appellant has stated thus:-

> "I would first deal with the proceedings initiated and the order made by the Collector and the relevant provisions of the Ceiling Act declaring an area of 108.3 bighas out of the petitioner's holdings as surplus area. The Ceiling Act which had been enacted "to consolidate and amend the laws relating to the Ceiling on land holdings in Himachal Pradesh" was enforced in July, 1973. As per Section 6 of this Act, no person was entitled to hold whether as a landowner or a tenant or a mortgagee with possession or partly in one capacity and partly in another, the land within the State of Himachal Pradesh exceeding the 'permissible area' on or after the 'appointed day'. 'Appointed day' has been defined in Section 3 as meaning 24th day of January, 1971, and the "permissible area" has been defined in Section 4. Section 8 next provides that every person, who on the 'appointed day' or at any time thereafter holds the land exceeding the permissible area, shall furnish to the Collector particulars of all his lands and that of the separate unit within the prescribed period and in the prescribed form and manner and stating therein the selection of land not exceeding in the aggregate the permissible area which he desires to retain. An option has thus been given to the land owner whose land holding exceeded the permissible area to furnish the particulars to the Collector in the prescribed form and in the prescribed manner stating the selection of land which he desires to retain and which, of course, must not exceed the permissible area. The Rules called the Himachal Pradesh Ceiling on Land Holdings Rules, 1973, were framed under the Ceiling Act and the same were notified in the Official Gazette on 22nd November, 1973. As per Rule 4 every person required to furnish a return under Section 8 shall himself or through an authorized person or in the case of a minor through his guardian

furnish it in duplicate in Form C-II to the Collector in whose jurisdiction the land is situate, personally or by registered post (acknowledgement due) within eighty-five days from the coming into force of the Rules. It is not disputed that the petitioner never cared to furnish the particulars required under Section 8 of the Act in the manner prescribed and within the period prescribed under Rule 4. In the case of a person who fails to select the permissible area in accordance with the provisions of Section 8, Section 9(2) of the Act empowers the Collector to select the permissible area of such person by order after collecting the information in such manner as he may deem fit. The Collector, therefore, in the instant case proceeded to act in exercise of his jurisdiction under Section 9(2) of the Act for selecting the permissible area of the petitioner. After collecting such information, he prepared the requisite statement under Rule 9 and sent a copy thereof to the petitioner inviting him to file his objections, if any, against that statement within 30 days from the date of service thereof. This statement found at Annexure-A was served on the petitioner on 24.3.1975. The petitioner, however, neither filed any objections nor did he care to himself appear before the Collector for that purpose. It was in these circumstances that the Collector in exercise of the powers vested in him under Section 10 of the Act passed his order declaring 108.3 bighas out of the petitioner's land as surplus for the purposes of Ceiling Act. In view of the factual position stated above and which is not controverted, it is not now open to the petitioner to contend that he was afforded no opportunity of selecting his permissible area or that he was not heard by the Collector before declaring his area as surplus. *The challenge of the petitioner against the order of the Collector declaring his area as surplus must, therefore, fail.*"

(emphasis supplied)

This being the position, it is not possible to accept the contention that the High Court did not decide the question of surplus area of the appellant. In the said order of the High Court, it is also noticed that the challenge to the validity of the provisions of the Land Reforms Act was given up by the learned counsel for the appellant. When the order of the High Court dated 3.7.1986 made in C.W.P. No. 456 of 1976 had attained finality, the Division Bench of the High Court was right and justified in passing the order on 10.3.1997 dismissing C.W.P. No. 1519 of 1995 taking a view that it was not

open to the appellant to re-agitate the matter as to the surplus area before the Collector or the Commissioner or before the High Court in the writ petition. If the appellant was not the excess holder, nothing prevented him from justifying the same by filing objections when draft statement was served on him on 24.3.1975. Assuming that wrong order was passed by the Collector affecting the rights of the appellant and when objections were invited, if the appellant has failed to avail that opportunity, it is not open to him to contend otherwise. The argument that opportunity was not given to the appellant as required under Section 9(2) of the Act, has also no substance. Combined reading of Sections 9 and 10 of the Act and Rules 9 and 10 framed under the Act, it becomes clear that the opportunities given to file objections to the draft statement and also opportunity of hearing before issuing a final statement is one composite hearing, even otherwise, there was no reason as to why the appellant should not have taken objections including as to the denial of opportunity of hearing under Section 9(2). It is not a case of not giving opportunity of hearing but a clear case of not availing of the opportunity given. It was not possible to Collector or the Commissioner to consider the case of the appellant contrary to or overlooking the order dated 3.7.1986 in C.W.P. No. 456 of 1976. It appears that the surplus area of land was in possession of the tenants and the proprietary rights on those lands were sanctioned in favour of the tenants as early as in 1976. The contention that possession could not be taken from the appellant without paying any compensation also has no force. It was for the appellant to claim compensation, if entitled to. The appellant has suffered the order on 14.7.1975 having not challenged the said order for many years, which ultimately attained finality by the order dated 3.7.1986, passed in C.W.P. No. 456 of 1976. Rights have accrued to the third parties and at this stage their rights also cannot be affected. This is one more reason as to why the impugned orders cannot be disturbed.

SLP was filed against the order dated 3.7.1986 made in C.W.P. No. 456 of 1976 only with a view to get over the impugned order made in C.W.P. No. 1519 of 1995. This apart, even on merits in view of what is stated above and looking to the reasons recorded by the High Court in the said order dated 3.7.1986, we do not find any good ground to disturb it that too at this stage almost after 16+ years affecting the rights of the parties. Under the circumstances, the Civil Appeal No. 3487 of 1998 has to be dismissed.

Alternatively, the learned counsel for the appellant urged that the appellant having become landless, his case may be considered by the authorities

A for allotment of land in case he applies. We only state that the dismissal of these appeals does not come in the way of the appellant, if in fact he is landless, to apply for allotment of land if permissible in accordance with law.

Thus, considering all aspects and facts and circumstances of the case, in our view, the impugned orders do not call for interference. Hence, the B appeals are dismissed with no order as to costs.

M.P. Appeals dismissed.