

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

LPA No. 70 of 2019
Reserved on : 13.03.2025

Date of decision: 11.04.2025

Dharam Singh & othersAppellants

Versus

Sheela (since deleted) & othersRespondents

Coram:

The Hon'ble Mr. Justice G.S. Sandhwalia, Chief Justice.
The Hon'ble Mr. Justice Ranjan Sharma, Judge.

Whether approved for reporting?¹

For the Appellants: Mr. N.K. Sood, Senior Advocate
with Mr. Hemant Kumar, Advocate.

For the respondents: Mr. Neeraj Gupta, Senior Advocate
with Mr. Ajeet Pal Singh, Advocate,
for respondents No. 3(a) to 3(c).

Mr. Bhim Raj, Advocate, for
respondent No. 4.

Mr. Srishti Chauhan, Advocate, for
respondent No. 5.

Ms. Priyanka Chauhan, Deputy
Advocate General, for respondents
No. 6 & 7.

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

G.S. Sandhawalia, Chief Justice

Consideration in the present Letters Patent Appeal is to the judgment in passed on 30.07.2019 by the learned Single Judge in Civil Writ Petition No. 4306 of 2011, whereby the writ petition filed by the writ petitioners has been dismissed.

2. Challenge in the writ petition as such was to the order dated 26.04.2011, passed by the Financial Commissioner (Appeals) H.P., whereby the right of the petitioners, who are the legal heirs of Surat Ram Mahantan regarding issue of mutation was termed as an attempt to alienate the land by misusing the provisions of the H.P. Tenancy and Land Reforms Act, 1972 (in short 'the Tenancy Act') to avoid payment of stamp duty. The Financial Commissioner upheld order dated 06.11.2022, passed by the Commissioner (Revenue), which was subject matter of Revision Petition filed before the Financial Commissioner, while coming to the conclusion that the order passed by the Commissioner (Revenue) was a detailed and well reasoned order where he has delved with the evidence adduced by the Field Revenue Officers including the Settlement Collector,

Shimla, Division. Resultantly, the prayer as such to uphold Mutation No. 1478, attested on 28.07.1989 in the name of Shri Surat Ram Mahantan, i.e. predecessor-in-interest of the present petitioners had been rejected by the said Authorities.

3. The learned Single Judge, in sum and substance, while discussing the evidence as such came to the conclusion that the land in question was situated in the urban area of Shimla and therefore, did not qualify to be termed as 'land' within the meaning of Section 2(7) of the Tenancy Act as there was construction over the area and it was not subservient to agriculture within the meaning of Section 118 of the Transfer of Property Act, 1882. Reference was also made to *Jamabandi* for the year 1976-77 to show that the ownership was of Raja Hitendera Sen, son of Shri Mahinder Sen, son of Shri Vijay Sen, Resident of Junga and the entry in Column No. 5 of cultivation possession was '*Kabja Swayam*' (self-occupation) and there was '*Gair Mumkin Ahata*' (courtyard) and two storeyed *Kothi (Kothi Do Manjila)*. The presumption of truth being attached to the revenue entries was kept in mind while holding that the corrections could not have been ordered to be made by

the Assistant Collector 2nd Grade Settlement or any other Revenue Officer, especially when there was no order passed by the superior Officer. Since the landlord as such had never got the revenue entries corrected in the earlier successive *Jamabandies*, therefore, the entries showed the possession as such of the landlord which had been changed by the Assistant Collector 2nd Grade, Settlement in favour of the predecessor-in-interest of the petitioners as tenant at will and even the nature of the land from constructed area into agriculture land was changed and thereafter proprietary rights were wrongly granted in favour of the predecessor-in-interest of the petitioners. It was noticed that solely on the statement of Sh. Surat Ram Mahantan recorded on 29.01.1988 and the application moved by the landowner on 18.08.1987 and his affidavit of the same date, the reports were prepared which were also beyond the jurisdiction of the Assistant Collector 2nd Grade, Settlement. Therefore, the proprietary rights could not have been given to the predecessor-in-interest of the petitioners.

4. Reliance was placed upon Rule 29 of the H.P. Tenancy and Land Reforms Rules, 1975 (for short 'Land Reforms Rules'), wherein it is provided that the Land

Reforms Officer in the capacity of Assistant Collector 1st Grade, is the competent Authority to order attestation of mutation for conferment of proprietary rights upon the tenant. Thus, it was held by the learned Single Judge that due to lack of jurisdiction as such, the Assistant Collector 2nd Grade (Settlement) was not the competent Authority to order the attestation of mutation for conferment of proprietary rights upon the tenant. It was further held that neither there was any agreement of tenancy nor any rent receipts nor the deed of tenancy and in the absence of said factors, the mutation as such was without jurisdiction and was an attempt to alienate the land by misusing the provisions of the Tenancy Act and by avoiding the provisions of the Registration and Stamps Act, as it would amount to transfer of the property exceeding the value of Rs. 100/-.

5. Senior Counsel for the appellants has argued that the land in dispute was an agricultural land and the findings recorded by the learned Single Judge are wrong. While relying upon the spot inspection done on 24.12.1987 by the Naib Tehsildar, it is contended that once the factual matrix had been arrived at by the Revenue Authorities and there was no objection raised by

the land owner regarding the preparation of the report as such, which has been given in the form of an affidavit, the learned Single Judge was not justified in dismissing the writ petition and not interfering with the orders of the Authorities.

6. Senior Counsel was fair to the extent and did not controvert the fact that the jurisdiction had been exercised by an Officer (Assistant Collector Grade II, Settlement, Shimla) as such, who was not competent to do so in view of provisions of Section 93 of the Tenancy Act and Rule 29 of the Land Reforms Rules. He contended that under Section 104(3) of the Tenancy Act, the rights of the landowner can be extinguished and rights, title and interest are to be transferred from the date to be notified by the State Government in the Official Gazette of the Rules, which was 4th October, 1975 in the present case and therefore, the right of the tenant to acquire the interest of the landowner was by operation of law.

7. Senior Counsel for the appellants has placed reliance upon the judgment rendered by a Single Judge of this Court in ***Mehar Chand & others Vs. Rakesh & others***, reported in ***2007(1) Shimla Law Cases, 64***, wherein it has been held that right/title and interest with

respect to the land was to be vested in the tenant free from all encumbrances. While falling back on Rule 27 of the Land Reforms Rules, it is contended that in view of the procedure for conferment of proprietary rights on tenants covered by sub-section (3) of Section 104, all rights, title and interests in the tenancy land of land owners who have already under their personal cultivation 3 acres un-irrigated or 1-1/2 acres irrigated land shall vest in the non-occupancy tenants with effect from the commencement of these rules.

8. Counsel for the respondents, on the other hand, has rightly pointed out that the issue in the present appeal is not regarding the claim of title. It is contended that it is only the mutation, which was wrongly attested on 28.07.1989 by the competent Authority. Once the same was not attested by the superior officer and the bar under the provisions of Section 93 the Reforms Act and Rule 27 of the Land Reforms Rule would come into play and therefore, the order passed by the Authorities not competent to do so, would be void as such.

9. Background as such and the antecedents of the petitioners' predecessor-in-interest Surat Ram Mahantan was highlighted that he was the General Power

of Attorney of the landowner and a retired Revenue Officer. The whole exercise of filing of the application for change of the ownership as such conferring proprietary rights upon the tenant was an act of collusion of the landlord and the tenant which had been exposed by the wife of the landlord and amounted to the alienation of the property. There was a litigation in the form of a civil suit before this Court in which the predecessor-in-interest of the present petitioners was arrayed as defendant No. 2, being a retired Deputy Secretary (Revenue) and the act of the alienation was done by way of the mutation proceedings.

10. Counsel for the respondents had rightly placed reliance upon Section 45 of the H.P. Land Revenue Act, 1954 and pointed out that the presumption of truth is attached to the revenue record and the land in question has been shown as "Gair Mumkin Ahata" in the revenue record and specific details of numbers was given therein, which were identical to the numbers given in the application filed by the land owner on 18.08.1987 praying that necessary change in the revenue record may be got effected by means of mutation under Rule 28 of the Land Reforms Rules.

11. Revenue record thus shows that the land was in self-occupation and the mutation amounted to change of title without payment of stamp duty. In the absence of any proof of tenancy as there was neither any agreement of tenancy nor any rent receipts nor any deed of tenancy, the inspection report of the Naib Tehsildar could not have been relied upon as it has not referred to any revenue record and the order was passed by an officer without having jurisdiction.

12. Resultantly, it can be held that the illegality conducted by the Revenue Officer had been rectified, no wrongs had been done and the finding recorded by the revenue Authority regarding change of mutation was a collusive action of the landlord and the tenant and, therefore, in writ jurisdiction, the impugned order may not be interfered with.

13. A reference can be made to the provisions of Section 2(7) of the Tenancy Act to point out that the land means the land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture which includes the sites of

buildings and other structures on such land of orchards, *ghasnies*, *banjar* and and private forests.

14. The perusal of the record would go on to show that a specific application by the landowner was moved for change of ownership of land comprised in Khasra No. 666/188/10/3 (measuring 891.8 square yards), 666/188/10/7 (measuring 213.8 square yards) and 676/188/1 (measuring 66.4 square yards), Kittas 3, total area measuring 1172 square yards and 2 square feet, situated in Station Ward, Chhota Shimla in favour of the predecessor-in-interest of the petitioners on the payment of rent at the rate of Rs. 50/- per annum, which had been paid by the tenant right from the year 1975. Thus, the claim as such surprisingly by the land owner was to divest himself of the land and that the tenant had become owner of the land by fiction of law under Section 104 of the Tenancy Act. The reasoning was given rightly by the Authorities that no *girdawari* had been carried out in the urban area of Shimla and therefore, there was no entry in the revenue record and the tenant had only appeared to confirm and acknowledge the same and there was collusion between the parties.

15. Under Rule 28 of the H.P. Tenancy and Land Reforms Rules, 1975, attestation of mutation was required to be done. Rules 27 to 29 thereof and Section 93 of the Tenancy Act, read as under:

“27. Procedure for conferment of proprietary rights on tenants covered by sub-section (3) of section 104 :- All rights, title and interests in the tenancy land of land-owners who have already under their personal cultivation 3 acres un-irrigated or 1 ½ acres irrigated land shall vest in the non-occupancy tenants with effect from the commencement of these rules. Similarly, the proprietary rights of tenancy land of the non-occupancy tenants on Government land shall also vest in the tenants from the commencement of these rules.

28. Attestation of mutations :- (1) The Patwari will enter the mutation of ownership in the mutation register in favour of the non-occupancy tenants on whom proprietary rights under rule 27 vested and the Revenue Officer will attest the mutation in the presence of the parties. (2) Where a part of a field number is vested in a tenant, a tatima Shajra of such part will be prepared on the body of the mutation sheets.

29. Determination of disputes under sub-section (4) of section 104 :- If there

is a dispute regarding the entries of the land records the Land Reforms Officer, in his capacity as an Assistant Collector of the First Grade, shall decide the dispute under sub-section (4) of section 104 in accordance with the relevant provisions of the Punjab Land Revenue Act, 1887 (17 of 1887), or the Himachal Pradesh Land Revenue Act, 1954, as the case may be. The disputes of such cases will be determined on a summary inquiry on the files. Where a tenancy is in a part of a field number, tatima shajras of that part will be prepared.

S. 93. Appointment of Land Reforms Officers.-(1) *As soon as may be after the commencement of this Act, the State Government shall appoint Land Reforms Officers, who shall be Revenue Officers of the rank of Assistant Collector of the First Grade, to carry out the purposes of this Chapter and Chapter X.*

(2) The officers appointed under sub-section (1) shall have the powers of Civil Court under the Civil Procedure Code, 1908, 5 of 1908 for the purpose of administering oaths, taking evidence and of enforcing the 40 H.P. Tenancy and Land Reforms Act, 1972 attendance of witnesses and compelling the production of documents and material objects.

(3) The officers appointed under sub-section (1) shall be guided by such instructions consistent with the provisions of this Act, as the State Government may from time to time issue. ”

16. The application moved by the landowner for change of ownership of land was duly supported by the affidavit of the landlord which specifies that the land was more than 3 acres of un-irrigated land in personal cultivation on 03.10.1975 and land measuring 1172 square yards as mentioned in the above Khasra numbers had been occupied by Surat Ram Mahantan as tenant and he was paying rent at the rate of Rs. 50/- per annum as non-occupancy tenant.

17. It is a matter of record that the alleged tenant as such was retired as Deputy Secretary (Revenue) and was arrayed as defendant No. 2 in the civil suit filed before this Court by Amar Singh and others and the land owner was also arrayed as defendant No.1 therein.

18. The dispute therein as such was regarding the properties of a Trust created by Rani Indumati Ji on August 04, 1944. In the plaint itself, it has been mentioned that General Power of Attorney had been executed in favour of

the tenant/predecessor-in-interest of the petitioners by the landowner who happened to be a retired Government Officer with enough experience on revenue side and allegations regarding the mis-appropriation of funds between defendant No. 1 and defendant No. 2 were made. In the application of stay, a specific averment was made regarding the land which is situated at Khalini, Shimla which falls within the Municipal limits of Shimla and had been alienated. A reference has been made to the transfer of land made in the month of July, 1989. Apparently, the mutation proceedings were concluded on 28th July 1989. It is not disputed that the stay as such in the civil suit was granted on 30th August, 1989 and there is a specific reference to the property in question in paras 4 & 5 of the stay application filed in the civil suit. Reference to the above averments are only worth the purpose to show the collusiveness as such between defendant No. 2 and the landowner in order to fortify and uphold a finding arrived at by the Revenue Authorities and the learned Single Judge that the transfer of the land was not *bonafide*, though the stay might have been granted at the subsequent point of time.

19. It is settled position that fraud goes down to the root of the matter and if it is so, the Courts will not give a stamp of approval to it. Reference can be made to the judgments passed by the Apex Court in **S.P. Chengalvaraya Naidu (dead) by LRs Vs. Jagannath (dead) by LRs & others, (1994) 1 SCC 1**, wherein it was held as under:

"5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-

evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

20. In ***Union of India & others Vs. Ramesh Gandhi, (2012) 1 SCC 476***, the said view was followed and it was held as under:-

"27. If a judgment obtained by playing fraud on the Court is a nullity and is to be treated as non est by every Court superior or inferior, it would be strange logic to hear that an enquiry into the question whether a judgment was secured by playing fraud on the Court by not disclosing the necessary facts relevant for the adjudication of the controversy before the Court is impermissible. From the above judgments, it is clear that such an examination is permissible. Such a principle is required to be applied with greater emphasis in the realm of public law jurisdiction as the mischief resulting from such fraud has larger dimension affecting the larger public interest."

21. An objection had been initially raised by the wife of the landowner, who is now supporting the orders of the Revenue Authorities cancelling the mutation, wherein it was mentioned that the application addressed to the Naib Tehsildar for transfer of land was made by the landowner to the alleged tenant. She resultantly filed an application for review of mutation No. 1478 which had been done on the ground that a false affidavit had been given and Surat Ram Mahantan had been wrongly shown as tenant of '*Gair Mumkin Ahata*' and not of the agricultural land and the same was within the limits of Municipal Corporation, Shimla.

22. It is also specifically mentioned that the predecessor-in-interest of the petitioners was also General Power of Attorney for managing the property affairs of the landowner and was Manager on behalf of land owner and reference has been made to the stay issued by the learned Single Judge.

23. Thus, the landowner was put to notice regarding the review of the mutation to which he had replied by filing a response (Annexure P-8) alleging that his wife was living separately and getting maintenance and she has no right to claim the properties and mutation

be confirmed. Resultantly, order dated 17.10.1989 (Annexure P-10) came to be passed, wherein mutation No. 1478 conferring the ownership rights was set aside by the Assistant Collector 2nd Grade, Shimla.

24. The appeal filed by the landowner was then dismissed on 26.04.1992 by noticing that the order dated 28.07.1989 passed by the Assistant Collector (Settlement) 2nd Grade entering mutation in favour of the tenant was wrong as he was not competent to decide a tenancy case and it is the Land Reforms Officer who is competent to decide the tenancy case under the Act. The Commissioner, Shimla Division on 23.03.1993 upheld the said order by placing reliance upon Section 93 of the Tenancy Act.

25. The order was however altered as such by the Financial Commissioner on 24.12.1999 (Annexure P-14) and the matter was remanded on the ground that the order was non-speaking.

26. The matter was again decided by the Commissioner on 06.11.2000, wherein after examining the revenue record, he came to the conclusion that the land in question was part of a building and attached courtyard and the landowner never asked for correction

in the *jamabandi* for the year 1976-77 and these could not be corrected and the remedy laid before the Civil Court. Only on account of some kitchen garden alongwith the building, it would not change the nature of the land and, therefore, the action of the Assistant Collector 2nd Grade as such making change in the revenue record was held to be void ab-initio.

27. Inspection on the spot as such was only on the basis of an application filed by the land owner for change of ownership and the affidavit of the land owner. The order of the Assistant Collector, (Settlement) 2nd Grade regarding attestation of mutation in favour of the tenant as such was without jurisdiction as per the Rules and there was collusive conspiracy between the landowner and the tenant by misusing the provisions of the Tenancy Act and to avoid the payment of stamp duty.

28. The Financial Commissioner gave a certificate as such to the tenant knowing that he was an HAS Officer and that there is no document on record to show that he was an agriculturist or that he remained as a tenant of the land in question and therefore, the acquisition of the tenancy has been taken by way of illegal means. The said order has been upheld by the learned Single Judge.

29. The above narration of facts would go on to show that apparently, the Manager as such of the landowner had resorted to tactics of transfer of land keeping in view the provisions of rights of tenant as such and taking advantage of his deep knowledge of revenue/tenancy law. The landowner as such apparently was an accomplice on account of the fact that he had an dispute with his wife regarding maintenance etc. and he was unwilling to let go his property and transfer the same to his wife. The application thus was self-serving and the argument raised by the learned Counsel for the appellant that spot inspection was carried out, is without any basis.

30. A perusal of the report of the site inspection would go on to show that on surmises and conjectures, the Naib Tehsildar came to the conclusion that the tenancy was since the year 1975 at the rate of Rs. 50/- per annum and there was no revenue record as such and thus he wrongly recommended the case to the higher Authorities. Neither any agreement of tenancy nor any rent receipts nor any deed of tenancy was placed on record to prove the tenancy and the averment of the landlord in the earlier part of the affidavit is self-serving.

31. In such circumstances, the argument raised that joint spot inspection has been carried out, which has been relied upon blindly, is not liable to be accepted.

32. Section 45 of the H.P. Land Revenue Act would go on to show that the presumption of truth is apparently attached to the record of rights and tenancy could not be treated in the instant case only on the basis of oral evidence of the witnesses.

33. Reliance can be placed upon the judgment rendered in ***Pratap Singh (dead) through legal representatives & others Vs. Shiv Ram (dead) through Legal representatives, 2020 (11) SCC 242***, wherein while dealing with the provisions of the Evidence Act, the said observations flowed and the findings returned by the High Court were set aside, by holding that the burden is on the person who asserts such a relationship as per Section 109 of the Evidence Act.

34. The relevant paragraph of the aforesaid judgment reads as under:

“20. The present is a case where no relationship of landlord and tenant is mentioned in the revenue record though required in terms of Section 32(2)(a) of 1954 Act. In the absence of entry in

the /revenue record, which is also expected to contain the entry of rent and possession, the tenancy cannot be treated to be in existence only on the basis of oral evidence of the witnesses examined by the defendant. The burden of proving the relationship was on the defendant. Such burden cannot be said to be rebutted only by oral evidence. The witnesses may lie but the documents do not, is a golden rule. The presumption of truth attached to the revenue record can be rebutted only on the basis of evidence of impeccable integrity and reliability. The oral evidence can always be adduced contrary to the revenue record but such oral testimony will not be sufficient to hold that the statutory presumption stands rebutted.”

35. Reliance placed upon the judgment as such in **Mehar Chand's** case (*supra*) by the Counsel for the appellant would not be applicable to the present case as it was civil suit for decree of possession, wherein it was to be determined that the non-occupancy tenant as such was competent to execute the Will or not. In such

circumstances, the findings recorded by the Lower Appellate Court as such were set aside.

36. The issue which is to be decided by this Court is whether the Revenue Authorities as such have rightly intervened in the mutation proceedings as such by rejecting the reasonings recorded in the orders which have been upheld at all levels after the order of mutation was passed on 17.10.1989.

37. Thus, the consistent findings returned by the Revenue Authorities which have been upheld by the learned Singh Judge, do not suffer from any infirmity and do not warrant any interference. The order of the learned Single Judge is well reasoned as he has rightly chosen not to interfere with the orders passed by the revenue Authorities, while exercising powers under Article 226 of the Constitution of India.

38. In the absence of any irregularity and illegality in the impugned order and the fraudulent manner in which the mutation was sought to be attested, we do not find any tenable reason as such to interfere with the well reasoned order passed by the learned Single Judge. Resultantly, there is no merit in the present appeal, and same is accordingly dismissed.

39. Pending application(s), if any, also stands disposed of.

(G.S. Sandhawalia)
Chief Justice.

April 11, 2025
(hemlata)

(Ranjan Sharma)
Judge.