State of H.P

Vs

Maharani Kam Sundri

Civil Appeal No. 1218 of 1985

(L. M. Sharma, Dr. A. S. Anand JJ)

15.10.1992

JUDGMENT

1. This civil appeal arises out of an application made by the respondent under Section 11(1) of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 (Act No. 15 of 1954) for acquiring the right, title and interest of the owner in the property in question. It has been alleged that since she had a tenancy right therein, she is entitled to the benefit of the section. The application was filed before the Compensation Officer, the designated authority in this regard which was rejected and the order was confirmed on appeal. The respondent challenged these orders in a second appeal before the High Court, under the provisions of Section 104 of the Act. The learned single Judge who heard the appeal went into the disputed questions at length and reversed the impugned decision and allowed the application of the respondent. A Letters Patent Appeal was thereafter filed by the State which was dismissed by a well reasoned judgment dated 26-7-1984.

2. It has been contended by the learned counsel for the appellant that for application of Section 11 of the Act, it is necessary for an applicant to establish not only his tenancy but also the fact that the property in question is "land" within the meaning of Section 2(5) which reads as follows :-

> " "Land" means 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 and includes :-
>
> (a) the sites of buildings and other structures on land,
>
> (b) orchards,
>
> (c) ghasnies."

Initially the learned counsel suggested that the right obtained by the respondent was not that of a tenant and this application was bound to fail on that ground alone. Subsequently, after a re-consideration, he has modified his stand and accepts that the finding of the High Court that the respondent was a tenant is correct. We, therefore, do not consider it necessary to deal with this aspect any further.

3. The second point namely that the property in question is not "land" within the meaning of the Act, has been strenuously pressed before us by the learned counsel. It has been contended that the

ingredients mentioned in Section 2(5) are not satisfied and the property cannot, therefore, be described as "land" within the meaning of the Act so as to clothe the respondent with any right under Section 11(1). We have gone through the judgments of the learned single Judge of the High Court as well as of the Division Bench and we find detailed consideration of all the relevant evidence and circumstances before arriving at the finding concurrently against the appellant with regard to the nature of the property. We, therefore, are not persuaded to go into the evidence again and reconsider the issue which is one of the facts and concluded by concurrent findings of the High Court on merits. At this stage we would like to point out that the limitations on the power of the High Court to interfere with findings of fact as mentioned in Section 100 of the Code of Civil Procedure are not applicable to the present case. In view of the wider scope of Section 104 of the Act the High Court was entitled to reappraise the evidence and come to its own findings, which has been rightly done in this case.

4. For the reasons stated above, we do not find any merit in this appeal which is dismissed, but without costs. Appeal dismissed.

</html