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C.A.No. 5424 OF 1998
PART-HEARD
ITEM No.101

Court No. 9

SECTION XIV

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No. 5424 of 1998

STATE OF HIMACHAL PRADESH Appellant (s)

VERSUS

CHANDER DEV & ORS.Respondent (s)

(With office report)

Date : 12/02/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE D.M. DHARMADHIKARI

For Appellant (s)Mr. J.S. Attri,Addl.AG.,HP.

For Respondent (s)Mr. Ashok Kumar Chhabra,Adv.
Ms. Madhu Moolchandani,Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard the learned counsel for the parties from 10.35 a.m. to 11.40 a.m.

The civil appeal is allowed.

No costs.

[T.I. Rajput] [Kanwal Singh]
Court Master Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5424 OF 1998

State of Himachal Pradesh

...Appellant(s)

Versus

O R D E R

The State of Himachal Pradesh is in appeal, assailing the validity and correctness of the judgment passed by the High Court in the second appeal.

The plaintiff filed a suit for declaration and mandatory injunction against the State of Himachal Pradesh pleading that his father, late Shri Chaudhary, was a tenant in respect of the suit land. After the death of Chaudhary, the plaintiff succeeded to the tenancy rights of the said land. After the commencement of the Himachal Pradesh Tenancy Land Reforms Act, 1972 [for short, 'the Act'], he acquired proprietary rights over the suit land. In spite of his request, mutation in respect of the said land was not effected to by the authorities to indicate that the plaintiff was the owner. Under the circumstances, he had to file the suit, which was resisted by the State of Himachal

...2/-

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Pradesh on various grounds. The trial court dismissed the suit after considering the respective contentions in the light of the evidence that was placed before it. The learned District Judge, in the appeal filed by the plaintiff, accepted the contentions urged on his behalf and set aside the judgement and decree passed by the trial court. The State of Himachal Pradesh filed second appeal before the High Court, aggrieved by the judgement and decree passed by the first appellate court. The second appeal was dismissed by the High Court negating the contentions urged on behalf of the State and holding that substantive rights of proprietorship acquired by the plaintiff on the date of the commencement of the Act by virtue of Section 104(3) of the Act could not be taken away by resorting to the provisions of the Amendment Act of 1987 wherein a proviso was added to sub-section (9) of Section 104 of the Act to the effect that nothing contained in the said section shall apply to such land, which is either owned by or is vested in the Government under any law, whether before or after the commencement of the Act, and is leased out to any person. The High Court also took the view that the amendment could not have retrospective effect in the absence of any express provision made in the amending Act at the amendment would be retrospective in its operation.

The learned counsel for the appellant urged that the High Court committed a serious error in disposing of the second appeal without formulating any substantial question or questions of law that arose for consideration between the parties as mandatorily required under Section 100 of the Code of Civil Procedure, 1908; looking to the very proviso added by the Amendment Act to sub-section (9) of Section 104 of the Act, it is quite clear that the said amendment was

...3/-

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retrospective in its operation; the intention of the Legislature is clearly expressed in the said amendment.

Per contra, the learned counsel for the respondents made submissions supporting the impugned judgment. He contended that the High Court was right and justified in dismissing the second appeal filed by the State, having regard to its earlier decisions in *Dinesh Kumar vs. State of Himachal Pradesh* [R.S.A. Nos.192, 193, 207 and 227 of 1994 decided on 30th December, 1994] and *Daulat Ram, Etc. vs. State of Himachal Pradesh* [C.W.P. No. 112 of 1977 decided on 5th December, 1978]; these two decisions of the High Court fully support the case of the respondents; the vested valuable and substantive rights of the respondents could not be taken away by a subsequent amendment; and the substantial question of law sought to be raised now before this Court was not at all raised before the High Court.

We have considered the submissions made by the learned counsel for the parties.

Section 104 of the Act, to the extent it is relevant, reads:

"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 exercised the right of resumption of tenancy land at any time since January 26, 1955, under any law as in force:

(2)

(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:

Provided that if a tenancy is created after the commencement of this Act, the provision of this sub-section shall apply immediately after the creation of such tenancy."

From the above provisions, it is clear that all rights, title and interest of a landowner 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. We are told that such notification was issued on 27th/29th September, 1975. The Amendment Act of 1987 received the assent of the President on 24th March, 1988. Sub-section (3) of Section 1 of the Amendment Act states that it shall be deemed to have come into force from the date of commencement of the Act but Section 3 and Section 4, insofar as it amends clause (g) and the second proviso to clause (i) of sub-section (2), sub-section (3) and sub-section (4) of Section 118 of the said Act, shall come into force at once. Section 2 of the Amendment Act clearly indicates that the proviso added at the end of sub-section (9) of Section 104 of the Act shall apply to such land, which is either owned by or is vested in the Government under any law, whether before or after the commencement of the Act, and is leased out to any person. Having regard to these provisions, certain substantial questions of law do arise for consideration between the parties, looking to the facts of the case and the contentions raised. What is the effect of the amended provision deemed to have come into force from the date of

commencement of the Act? Whether any substantive rights accrued to the plaintiff on the date of the commencement of the Act if read with the amended provision which is also deemed to have come into force from the date of commencement of the Act itself? It may also be considered whether sub-section (3) of Section 104 of the Act and the proviso added by way of amendment at the end of sub-section (9) of Section 104 of the Act should be read independently and their effect is to be considered on the rights of the plaintiff in relation to the conferment of the proprietary rights on the plaintiff. Under the circumstances, the High Court was definitely required to formulate substantial questions of law before deciding the second appeal. The learned counsel for the parties do not dispute that the second appeal has been disposed of by the High Court without formulating any substantial question(s) of law and there has been no consideration of any substantial question(s) of law, as is clear from the impugned judgement. In this view, the impugned judgement is set aside. The second appeal is remitted to the High Court for formulating substantial questions of law that do arise for consideration between the parties under Section 100 of the Code of Civil Procedure, 1908 and the substantial questions of law may be formulated in the light of the observations made above and the High Court shall, after such formulation of the substantial question or questions of law, dispose of the second appeal on merits.

No costs.

.....J.
[SHIVARAJ V. PATIL]

.....J.
[D.M. DHARMADHIKARI]

New Delhi,
February 12, 2004.