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C.A.No. 6111 OF 1999
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6111 OF 1999

STATE OF H.P.... APPELLANT

VERSUS

HARNAMA ... RESPONDENT

O R D E R

Heard learned counsel for the parties.

In this appeal, the judgment of the High Court made in the second appeal is under challenge. The following substantial questions of law were formulated by the High Court while admitting the second appeal :

1. Whether the suit land has vested in the State of H.P. under the H.P. Ceiling on Land Holdings Act, 1972 free from all encumbrances.
2. Whether Civil Court has jurisdiction to try and entertain Civil suit in view of bar created under Section 18 of H.P. Ceiling on Land Holdings Act, 1972 (Act No.19 of 1973).
3. Whether the suit is barred by limitation.

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4. Whether the proprietary rights in respect of Government land cannot be granted in view of the amendment carried out in Section 104 of H.P. Tenancy and Land Reforms Act, 1972."

The High Court answered the first substantial question of law against the appellant-State holding that the possession of the land in question had not been taken and consequently, it did not vest in the State. The other substantial questions were not answered as the result of the case depended upon the answer to the first substantial question of law. The First Appellate Court also had recorded the finding to the same effect in relation to the possession. In the impugned judgment, it is stated thus :

" The facts on record go to show that no such order was passed directing the person in possession, either the predecessor-in-interest of the plaintiff or the plaintiff who were in possession of the property at all relevant point of time, to deliver possession or give them any opportunity and the plaintiff and his predecessor in interest who have been in indisputable possession of the property do not appear to have been apprised of the proceedings or proposal to take

over the possession or the actual taking over of the possession of the properties in their possession. In view of this vital lapse which undermines the efficacy of the possession said to have been taken and the legality of the mutation of revenue records, the inevitable conclusion that follows is

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that the statutory vesting as envisaged under Section 11 of the Ceiling Act has not taken place in this case. If that be the legal consequence of the factual finding recorded by the learned First Appellate Court, which has the approval of this Court also by virtue of the provisions of the Tenancy Act on and from 3.10.1975, the predecessor in interest of the plaintiff himself has become the owner of the property and by virtue of the Will executed by him, the plaintiff has succeeded to such rights of his predecessor in interest. I am unable to agree with the submissions of the learned counsel for the State that having regard to the retrospective nature of the provision to Section 104 of the Tenancy Act, it is even now open to them to have recourse to take possession and by virtue of the provisions of the proviso, the question of the plaintiff acquiring rights as owner of the property does not arise. In my view the fact that the land in question has been notified as surplus or that the original owner of the land has been paid the compensation will be of no avail to the State if before the date of vesting actually taking place the non-occupancy tenant in possession of the land has acquired the rights of the owner in which case there is no scope for now pursuing action under the Ceiling Act to take possession of the lands treating the lands to be that of the original owner."

Under these circumstances, having regard to what is stated by the High Court in the impugned judgment as extracted above, it is not possible to take a contrary view.

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This being the position, the appeal is dismissed finding no merit in it.
No order as to costs.

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

New Delhi, [B.N. SRIKRISHNA]
September 30, 2004.
ITEM NO.108 COURT NO.6 SECTION XIV

CIVIL APPEAL NO. 6111 OF 1999

STATE OF H.P.

Appellant (s)

VERSUS

HARNAMA
(With office report)

Respondent(s)

Date: 30/09/2004 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SHIVARAJ V. PATIL
HON'BLE MR. JUSTICE B.N. SRIKRISHNA

For Appellant(s) Mr. J.S. Attri, Adv.
Mr. Pramod Kumar Yadav, Adv.

For Respondent(s) Ms. Madhu Moolchandani, Adv.

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

Heard learned counsel for the parties for 20 minutes.
The appeal is dismissed with no order as to costs in terms of the signed order.

Sarita (Shelly Sengupta)
Court Master

(Signed order is placed on the file)