REPORTABLE

Corrected

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 6015 OF 2009

State of Himachal Pradesh and others Appellant(s)

versus

Ashwani Kumar and others Respondent(s)

J U D G M E N T

M.Y. Eqbal, J.:

This appeal by special leave is directed against judgment dated 7.5.2007 passed by the Division Bench of the High Court of Himachal Pradesh, whereby the writ petition preferred by the respondents was allowed and the orders passed by the Revenue Authorities were quashed, holding that every landowner of the family of one Dev Raj was entitled for a separate unit.

2. The facts in nutshell are that Dev Raj, predecessor-in-interest of the respondents herein, was holding land measuring 2400 kanals 9 marlas in village Kalroohi and Mubarikpur as owner. He was issued notice in form C-V in which area measuring 1767 Kanals 9 Marlas was proposed to be declared as surplus under the Himachal Pradesh Ceiling on Land Holdings Act, 1972. Instead of filing objection, the landowner filed a writ petition in which High Court directed that the determination of surplus area be made by the Collector. On 22.7.1976, the Collector, Una District passed an order holding that the land owned by wife of late Dev Raj namely, Smt. Kala Devi, and Yash Pal, Dharam Pal, Ram Pal sons of Dev Raj be excluded from the holding of landowner Dev Raj and all the members of the family holding land continue to enjoy rights therein to the extent of the determined permissible area. Thereafter, while deciding reference in revision, the Financial Commissioner, Himachal Pradesh remanded the case to the Collector for decision afresh in accordance with law after affording due opportunity to the

respondents. After remand, the Collector Land Ceiling, Una passed order holding that Dev Raj and that of his family with Ram Paul being adult son on the appointed day i.e.24.1.1971, the landowner is entitled for two units of land as permissible area.

3. In appeal against the aforesaid order, the Divisional Commissioner, Kangra Division, on 30.3.1986, held that the provisions of Section 4(6) are very explicit under which the total land held by the family members has to be considered. In revision, the Financial Commissioner (Appeals) upheld the order of the Divisional Commissioner. Thereafter, successor-in-interest of Dev Raj filed writ petition before the High Court of Himachal Pradesh challenging the orders passed by the Revenue Authorities.

4. Before the High Court, respondents pleaded that the writ petitioners in their own right are individual landowners before the appointed day under the Act. Their individual land

holdings cannot be clubbed together for determining permissible area under Section 4 of the Act and such petitioners are entitled to one unit individually under the Act. The individual holding of all petitioners except writ petitioner no.1 is far below permissible area. Therefore, while determining their permissible area, the surplus area out of the land holding of writ petitioner no.1 only is to be excluded, the others do not have any surplus area as their individual holding is within the permissible limits of the Act. It was argued before the High Court that the order dated 22.7.1976 passed by the District Collector but other orders passed subsequent to that order are not in accordance with the Act. It has been urged that in sub-section (4) of Section 4 adult son of a landowner is entitled to a separate unit up to the extent permissible to a 'family' under sub-section (1) and (2) but once adult son himself is a landowner in his own right, then he is entitled to hold permissible area under the Act in his individual capacity and he cannot be confined to have separate unit up to the extent permissible to a family.

5. Per contra, State of Himachal Pradesh heavily relied upon sub-section (6) of Section 4 of the Act and contended that writ petitioners nos.2 to 5 are members of the family of writ petitioner no.1, and therefore, their holding individually together with the land held by all of them shall be taken into account for the purposes of calculating the permissible area.

6. The Division Bench of the High Court allowed the writ petition and quashed the orders passed by the Revenue Authorities directing the Collector Land Ceiling, Una to determine the permissible area of original writ petitioners nos.1 to 5 individually in the light of the observations made in the impugned judgment. The High Court observed thus:

> "23. In Annexure P-11 it has come that petitioner No.1 Dev Raj has four sons who are all major and reside separately from their father. As against this evidence, the respondents have not proved that the petitioners No.2 to 5 have acquired any land through petitioner No.1 before the appointed date 24.1.1971. The simple case of the respondents is that since petitioners No.2 to 5 are family members of petitioner No.1, therefore, their individual holding is to be counted for determination of permissible area of all family members as a unit and, therefore, all of them collectively are entitled to only two units. This

> argument of the respondents has no force; firstly, petitioner No.2 is the wife and petitioners No.2 to 5 are adult sons of petitioner No.1. Family has been defined as husband, wife and their minor children or anyone or more of them. The petitioner No.2 being the wife of petitioner No.1 is entitled to be treated as an individual person for the purposes of determining the permissible area available to her as held in Raj Kumar Rajinder Singh's case (supra). The petitioners nos.3 to 5 are not family members of petitioner no.1 as per definition of family and otherwise also their individual land holding cannot be counted under sub-section (6) of Section 4 for determination of permissible area along with petitioner no.1. Even if petitioners nos.3 to 5 on the appointed date were minors still their individual holdings cannot be counted for determining the permissible area of petitioner no.1 Dev Raj. The permissible area of all petitioners is to be determined under Section 4 separately under the Act. The authorities have erred in reviewing the order dated 22.7.1976 Annexure P-11 by applying Mehar Ali's case decided by respondent no.2."

7. Challenging the decision of the High Court, the State of Himachal Pradesh and its revenue authorities have preferred instant appeal by special leave raising question of law whether in view of the provisions of the Himachal Pradesh Ceiling on Land Holdings Act, 1972, a family of husband, wife, one adult son and three minor children, though everybody was holding the land on 24th day of January, 1971, could hold more than two units of permissible area?

8. Mr. Suryanarayana Singh, learned Sr. AAG appearing for the State of H.P., assailed the impugned judgment passed by the High Court mainly on the ground that the provisions of the Himachal Pradesh Ceiling on Land Holdings Act, 1972 (for short, "the Act") has been interpreted in such a way that it has swayed away the very object of the ceiling law. According to the learned counsel, the original writ petitioner Dev Raj and his wife were having 4 sons; one major and 3 minors on the appointed day when the Ceiling Act came into force i.e. 24.01.1971. According to the learned counsel, the High Court has not correctly interpreted Section 4 of the Act and the definition of terms, "landowner", "permissible area", "person", "separate unit" and "surplus area". Learned counsel further submitted that the High Court has erred in law in holding that the earlier judgment in Raj Kumar Rajinder Singh's case, the Court has recorded a finding in paragraph 19 of the judgment when as a matter of fact that was the submission made by the counsels in that case. Mr. Suryanarayana further submitted that it is an admitted case of both the parties that on 24th

January 1971 the landowner Dev Raj was having a family comprising of his wife, one adult son and 3 minor sons. By correctly interpreting the provisions of the Act, it cannot be held that all the members of the family shall hold land separately and their holdings cannot be counted for determining the permissible area.

9. Per contra, Mr. Anil Sachthey, learned counsel for the respondent, fully relied on the decision of the Full Bench of the Himachal Pradesh High Court in Raj Kumar Rajinder's case (AIR 1976 HP 82(FB). Learned counsel submitted that the Full Bench considered the provisions of the Act and held that additional area is added on the fiction that so much more land out of the land holding is required as a provision in the hands of the land holder in respect of an adult son.

10. Mr. Sachthey, then submitted that in any event it is a settled proposition of law that where a decision is allowed to stand or followed for a considerable length of time then the

Court is reluctant to interfere on the principle of *stare decisis.* In this connection, learned counsel relied upon the decisions of this Court in the case of ***Gajnan and Others vs. Seth Brindaban;*** (1970) 2 SCC 360 and ***Raj Narain Pandey and Others vs. Sant Prasad Tewari and Others;*** (1973) 2 SCC 35.

11. At this stage, we think it proper to go through the relevant provisions of the Act. Section 3 defines the word "family" and "person" as under:-

> "3(e) "family" means husband, wife and their minor children or any one or more of them;
>
> xxxx
>
> 3(n) **"person" means the landowner,** tenant and mortgagee with possession, **and includes** a company, **a family**, an association or other body of individuals, whether incorporated or not, and any institution capable of holding property;"

12. Perusal of the aforesaid definitions makes it clear that the words "family" and "person" mean the landowner etc. in the Act. Section 4 of the Act reads as under:-

> **"Section 4: Permissible area**
> (1) The permissible area of a landowner or a tenant or a mortgagee with possession or partly in one capacity or partly in another of person or a family consisting of

husband, wife and upto three minor children shall be in respect of-

(a) land under assured irrigation capable of growing two crops in a year- 10 acres.

(b) land under assured irrigation capable of growing one crop in a year- 15 acres.

(c) land of classes other than described in clauses (a) and (b) above including land under orchards-30 acres.

(2) The permissible area for the purposes of clause (c) of sub-section (1) for the districts of Kinnaur and Lahaul and Spiti, Tehsil Pangi and Sub-Tehsil Bharmaur of Chamba district, area of Chhota Bhangal and Bara Bhangal of Baijnath Kanungo Circle of Tehsil Palampur of Kangra district, and area of Dodra Kowar Patwar Circle of Rohru Tehsil and Pandrabis Pargana of Rampur Tehsil of Shimla district shall be 70 acres.

(3) The permissible area of a family under sub-section (1) shall be increased by one-fifth of the permissible area under sub-sections (1) and (2) for each additional minor member of a family subject to the condition that the aggregate permissible area shall not exceed twice the permissible area of family under sub-sections(1) and (2).

(4) Every adult son of a person shall be treated as a separate unit and he shall be entitled to the land upto the extent permissible to a family under sub-sections (1) and (2) subject to the condition that the aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible under the said sub-sections:

Provided that where the separate unit owns any land, the same shall be taken into account for calculating the permissible area for that unit.

(5) If a person holds land of two or more categories described in clauses (a), (b) and (c) of sub-section (1) and sub-section (2) of this section then the permissible area shall be determined on the following basis:-

(i) in the areas mentioned in sub-section (2) of this section, one acre of land mentioned in clause (a) of sub-section (1) shall count as one and a half acres of land mentioned in clause (b)

of sub-section (1) and seven acres of land mentioned in clause (c) of sub-section (1);
(ii) in the areas other than the areas mentioned in sub-section (2) of this section, one acre of land mentioned in clause (a) of sub-section (1) shall count as one and a half acres of land mentioned in clause (b) of sub-section (1), and three acres of land mentioned in clause (c) of sub-section (1):

Provided that on the basis of ratio prescribed in clauses (i) and (ii), the permissible area shall be converted into the category of land mentioned in sub-section (2) and in clause (c) of sub-section (1) as the case may be, and the total area so converted shall not exceed 70 acres in case of clause (i) and 30 acres in case of clause (ii).

(6) Where a person is a member of the family, the land held by such person together with the land held by all the members of the family shall be taken into account for the purpose of calculating the permissible area."

13. By reading the plain language of Section 4, it provides that the landowner may be a family, capable of holding property, consisting of husband, wife and three minor children. As per sub-section (1) of Section 4, the permissible area which a family consisting of husband, wife and up to three minor children shall be to the extent provided therein. It is, therefore, manifest that under Section 4(1) of the Act, the family is limited in terms of number of minor children, though

in the definition clause, i.e. under Section 3(e), "family" is not limited in terms of minor children. The family, therefore, will be taken as an individual unit for the purpose of determining the permissible area under the Act. Sub-section (4) of Section 4, however, makes it clear that every adult son shall be treated as a separate unit and he shall be entitled to the land up to the extent permissible to a family under sub-sections (1) and (2) subject to the condition that the aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible under the said sub-section. Sub-section (6) of Section 4 further makes it clear that where a person is a member of the family, the land held by such person together with the land held by all the members of the family shall be taken into account for the purpose of calculating the permissible area.

14. In other words, by reading the entire provisions of Section 4, particularly sub-section (6) of Section 4, it is made clear that even if the respondents were holding property in

their respective individual capacity as a person, land held by them will be taken into account for the purpose of calculating the permissible area. The provision in its clear term provides one kind of an exception in case of an adult son of a person. In that case such adult son will be treated as a separate unit and he is entitled to have separate unit of permissible area up to the extent of the permissible area of a family subject to the condition that the aggregate land of the family and that of a separate unit put together shall not exceed twice the area permissible. If we read sub-section (4) minutely, it comes out that in the first part the legislature used the word "separate unit" but in the later part the legislatures have used the word "separate units" as plural. The opening words of sub-section (4) of Section 4, starts with "every adult son of a person" meaning thereby even if a person has more than one adult son, all will be treated as separate unit individually but subject to the condition that aggregate land of the family and that of the separate units put together shall not exceed twice the area permissible under the said sub-section.

15. Section 6 of the Act reads as under:-

> **"6. Ceiling of land: -** Notwithstanding anything to the contrary contained in any law, custom, usage or agreement, no person shall be 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."

16. Another important provision is Section 17, which deals with the case of future acquisition of land by inheritance or otherwise in excess of permissible area or increase in such area as a result of operation of this Act. Section 17 reads as under:-

> **"Section 17: Future acquisition of land by inheritance or otherwise in excess of permissible area or increase in such area as a result of operation of this Act:**
>
> (1) Subject to the provisions of section 15, if after the commencement of this Act, any person, whether as landowner or tenant, acquires by inheritance or by bequest or gift from a person to whom he is an heir of any land, or any person has acquired by transfer, exchange, lease, agreement or settlement any land, or if, after such commencement, any person acquires in any other manner any land, which, with or without the lands already owned or held by him, exceeds in the aggregate the permissible area or any person whose land exceeds the permissible area as a result of the operation of any provision of this Act, then he shall, within the period prescribed, furnish to the Collector, a return in the prescribed form and manner giving the

particulars of all lands and selecting the land not exceeding in the aggregate the permissible area which he desires to retain, and if the land of such person is situate in more than one patwar circle, he shall also furnish a declaration required by section 9.

(2) If he fails to furnish the return and select his land within the prescribed period, then the Collector may in respect of him obtain the information required to be shown in the return through such agency as he may deem fit and select the land for him in the manner specified in sub-section (1) of section 8.

(3) If such person fails to furnish the declaration, the provisions of (Section 9) shall apply.

(4) The excess land of such person shall be at the disposal of the State Government for utilization as surplus area under section 15 or for such other purpose as the State Government may by notification direct.

Explanation:- In the case of family, the return may be furnished by any adult member of the family and in the case of the sole minor by his guardian:

Provided that the Collector shall, before determining the surplus area, give to all the members of the family an opportunity of being heard."

17. The aforesaid provision makes it clear that when any person/landowner acquires or succeeds land which is in excess of permissible area after the commencement of the Act, such land holder has to file separate return to the Collector as per Rule 16 of the Himachal Pradesh Ceiling on Land Holdings Rules, 1972.

18. The High Court passed the impugned order based on the decision of the Full Bench of the High Court in ***Rajkumar Rajindra Singh vs. Union of India,*** ILR 1976 HP 453. The Division Bench of the High Court quoted some of the paragraphs of Full Bench decision. In order to appreciate the impugned order, we shall quote paragraphs nos. 17, 18 and 19 of the impugned judgment as under:-

> "17. In Rajkumar Rajinder Singh's case (supra), Full Bench of this Court in Paragraph-8 has held as under:-
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> ".....It is the permissible area in the case of a person or a family. And it is the permissible area in respect of the landholding of such person or family. It is the landholding of such person or family alone which forms the subject-matter of Section 4, and the several sub-sections lay down the principles for the mathematical computation of the permissible area in respect of such land-holding. Section 4 is not concerned with the landholding of any other person or family nor with the transfer of the rights of one landholder in favour of another.
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> 18. In Paragraph 24, the Full Bench has held that no doubt that sub-section (6) of Section 4 contemplates where a person is a member of family, the land held by such family together with the land held by all the members of the family shall be taken into account for the purposes of

> calculating the permissible area, that question can arise only in relation to a family, the provision is concerned only with the mathematical computation of the permissible area.
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> 19. In paragraph- 19, the Full Bench has held:-
> The petitioners say that while a husband and the children have the right to hold land a wife has been deprived of such right. There is nothing in the Act which can lead to that conclusion. A family, consisting of husband, wife and children has been recognised as a unit for the determination of the permissible area, and the land holding of the family as such is treated for that purpose. If a wife holds land separately in her own right, she is entitled to be treated as an individual person for the purposes of determining the permissible area available to her."

19. From perusal of the aforementioned paragraphs of the Full Bench judgment, it appears that the High Court has completely departed from the plain language used in Section 4 of the said Act. The High Court has committed serious error of law in holding that if a wife holds land separately in her own right, she is entitled to be treated as an individual person for the purpose of determining the permissible area available to her. We are of the definite opinion that the Full Bench has not rightly interpreted the provisions of the Act.

20. The submission made by learned counsel appearing for the respondents that the impugned judgment needs no interference on the principle of *stare decisis* cannot be accepted. The decision relied upon by the respondents in the case of **Gajnan** (supra), this Court held that to maintain certainty in the judicial decision the court should refrain from interfering with such decision which stood for a long period. However, this Court has clearly laid down that this principle will be applicable "where the meaning of a statute is ambiguous and capable of more interpretations than one".

21. This Court in ***Indra Sawhney and others vs. Union of India and others, etc.*** AIR (1993) SC 477, in paragraph 26-A of the Judgment, considered the principle of *stare decisis* and observed that in the law certainty, consistency and continuity are highly desirable features. Where a decision has stood the test of time and has never been doubted, we have respected it

unless, of course, there are compelling and strong reasons to depart from it.

22. We make it clear that to maintain certainty in the judicial decision, we have to restrain from interfering with the decision of the High Court which has stood for a long period on the principle of *stare decisis*. However, the said principle will be applicable where the meaning of the Statute is ambiguous and capable of more interpretation than one. In the instant case, the provision of the Act/Statute is very clear and, therefore, principle of *stare decisis* is of no help to the respondents.

23. Apart from that it appears that the instant case arose out of certain proceedings initiated as far back as in 1974, and travelled up to this Court. The Full Bench judgment came only in the year 1976 and, therefore, in our considered opinion, the doctrine of *stare decisis* should not apply in the facts of the present case.

24. Considering the entire facts of the case and the relevant provisions of the Act, we are of the definite opinion that the impugned judgment passed by the High Court is contrary to law, facts on record, and the findings recorded therein cannot be sustained.

25. We, therefore, allow this appeal and set aside the judgment passed by the High Court.

.....J.
(M.Y. Eqbal)

.....J.
(C. Nagappan)

New Delhi
November 26, 2015