

LAND REFORM LAWS IN THE STATE OF HIMACHAL PRADESH**-AKSHAY DUTTA¹****Abstract**

Assignment is based on the State structure and pattern of agricultural property. It has been protected under the State amendment acts so that intrusion onto the fertile soil cannot be made. Himachal is one of the fewer states in north east seven states which have been conferred with special powers of its own.

Statement of Problem

The main aim of assignment is to discuss the problem of transfer of property in Himachal Pradesh and its implications on the society. Sec 118 of Himachal Land Tenancy act is in main limelight here in light of which the assignment has been made. Efforts have been made to gather the practical knowledge out of such research so that a better understanding of transfer of properties can be understood in relation to State amendments.

Research Methodology

Based wholly on doctrinal research this assignment covers various heads under it. Firstly it provides the brief history of the state. Explanatory method has been used to describe and analyse the concept of property in Himachal Pradesh. Primary sources such as statutes and legislations are used. Assignment includes secondary research too. Books and commentaries are used with references provided there in the syllabi itself. Websites, dictionaries and articles have also been referred to gather more knowledge on the perspectives of the title and providing a superstructure to make the assignment structural and organised.

Secondly, it covers the various others acts and legislations in Himachal. Then by using deduction method it has been tried to make an analytical note so that an overall insight can be created for the above. Finally it concludes the topic with practicalities and importance of Himachal Pradesh Tenancy and Land reforms act, 1972.

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Notice

Innovative technique is used to determine the state amendment in consonance with interlinkage with different other disciplines so as to come up with a new conclusion on the point with the help of such interdisciplinary approach.

INTRODUCTION

Himachal Pradesh is predominantly an agricultural State where Agriculture, Horticulture, Fisheries and Animal Husbandry provide direct employment to about 71 percent of the total population. The Agriculture Sector contributes nearly 30 percent of the total state domestic product. Developmental Programmes and disseminating the relevant technology to increase productivity, production and profitability of field crops. The natural endowments like soil, land, water etc. are being harnessed in such a way that cherished goals of ecological sustainability, economic upliftment of farming community are achieved. About 18-20% area is irrigated and rest is rain fed. Department of Agriculture: The Department of Agriculture was established in the year 1948. In 1950, it was merged with Forest Department. The Department started functioning independently in the year 1952. In 1970, Horticulture was carved out of the Department of Agriculture and separate Department of Horticulture was established. The agriculture research was also taken out from Agriculture Department and was assigned to Agriculture Complex now Agriculture University, Palampur, Central Potato Research Institute Shimla, DR.Y.S. Parmar university of horticulture and forestry Nauni, Solan and many more. The Department of Agriculture is therefore now concentrating on agriculture production and soil water conservation.²

CONSTITUTIONAL PROVISIONS RELATED TO LAND

By virtue of seventh schedule, list II that is State list entry 18 land has to be dealt by State laws respectively. Bare language says that land that is to say, right in or over, land tenures including the relation of landlord and tenant, and the collection of rents; transfer and alienation of

²HIMACHAL CIRCUIT, G.D. KHOSLA.

agricultural land; and improvement and agricultural loans; colonization. Therefore every State has different rent control acts and different patterns of tenancy and agricultural property.³

LAND REFORM LAWS IN THE STATE OF HIMACHAL PRADESH

Generally, Land means an immovable and indestructible three dimensional area consisting of a portion of the earth's surface, the space above and below the surface, and everything growing on as permanently affixed to it. Himachal has witnessed various land reforms after getting a full-fledged statehood and before that also. Reform refers to amendment of what is defective, vicious, corrupt or depraved, rectification or correction, to put into a new and improved form or condition, to restore to a former good state, or bring from bad to good, to change from worse to better, to amend, to correct. Reform seeks to improve the system as it stands.

'Land Reforms' is abolishing the existing defective structure of land holdings by introducing a rationalized structure in order to increase the agricultural productivity. Land Reforms refer to all kinds of policy induced, changes relating to the ownership, tenancy and management of land. In simple words, it refers to such institutional changes that make property relations favourable to tiller of the soil and which raise the size of the units of cultivation to make them operationally viable.⁴

The concept of land reforms did not arise in pre-agricultural times because at that time population was scarce and ample land was available. With the rise in population, pressure on land was also enhanced thereby leading to concentration of land in the hands of few persons which ultimately necessitated the urgency of land reforms.

Himachal is an agricultural economy with great dearth, and an unequal distribution of resources including land, there is a large mass of rural population below the poverty line which ultimately leads to enthralling financial and political opinions for land reform. The main purpose of land reforms is efficient use of scarce land resource, redistributing agricultural land in favour of the less privileged class in general and cultivating class in particular. Land reform can be explained as redistribution of land from the rich to the poor. Generally, it comprises of regulation of

³ CONSTITUTION OF INDIA, SEVENTH SHCHEDULE LIST-II

⁴ AMIT HAZRA, LAND REFORMS MYTHS AND REALITIES (Concept Publishing Co., New Delhi, 2006).

ownership, inheritance of land, operation, sales, leasing, maintenance of land records, etc. Indeed, the redistribution of land itself requires legal changes.

At the present juncture, every bit of land is to be utilised to meet the needs of ever increasing population which can be made possible only with the equitable distribution of land among the tillers i.e. poor peasants and landless agricultural labourers.⁵

Aim of Land Reforms⁶:

- Providing Land to the tiller.
- Improvement in the position of agricultural workers.
- Applying better system of land management to enhance production of the land.
- Reduction of inequalities in opportunities and income by making redistribution of land to make a socialistic pattern of society. Such an effort will reduce the inequalities in ownership of land.
- Land Reforms will ensure land ceiling and taking away of the surplus land to be distributed among the small and marginal farmers.
- Legitimise tenancy within ceiling limit and establish relation between tenancy and ceiling.
- Protection of interest of tribals by preventing non-tribals to encroach upon the land of tribals.(42.49% area covered by tribal areas).
- Empowerment of women in the traditionally male driven society.
- To register all the tenancy with the village Panchayats. And see that everyone can have a right on a piece of land.
- In general, the raising of living standards in rural areas and removing rural poverty.

Land reform related Laws in State :

⁵G. R. MADAN, INDIAS, DEVELOPING VILLAGES (Allied Publishers Ltd., New Delhi, 1990)

⁶P. L. MEHTA AND M. G. CHITKARA, "IMPACT OF TENANCY AND LAND REFORMS IN HIMACHAL PRADESH" (1990)

- **The Himachal Pradesh Nautor Land Rules, 1968 :**

'Nautor Land'⁷ means the right to utilize, with the sanction of the competent authority waste land owned by the government outside the towns, reserved and demarcated protected forests and outside such other areas as may be notified from time to time by the state government. Under these rules procedure is provided for grant of land to needy section of society. Nautor lands are granted out of Government waste land upto twenty bighas to the applicants subject to the fulfillment of the conditions laid down under the rules. The object of granting nautor land under the rules is to help poor and unprovided residents of Himachal Pradesh.⁸

- **The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 :**

There is a special scheme called the Himachal Pradesh Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme, 1975 under which nautor lands upto five bighas /are granted to the landless and other eligible persons. Under this scheme the powers have been delegated to the Tehsildars to sanction nautor lands in order to avoid delay.

- **The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 :**

The Himachal Pradesh Holdings (Consolidation and Prevention of Fragmentation) Act, 1971 provides that wherever consolidation is feasible, it should be carried on to consolidate fragmented holdings in Himachal Pradesh under this Act. Compact blocks were created during consolidation which further aimed at raising the economic standard of rural poor and agricultural production.

- **The Himachal Pradesh Tenancy and Land Reforms Act, 1972⁹:**

⁷ The New Webster's Pocket Dictionary (2001).

⁸ VOLUME 4 ISSUE 2 March 2018 www.ijldai.thelawbrigade.com

⁹ Tenancy Reforms in India, Available at www.legalserviceindia.com (last visited on May 10th, 2019)

By enacting the Himachal Pradesh Tenancy and Land Reforms Act, 1972 a new era marking abolition of intermediaries on land has ushered in the state. The act inter alia examines the relationship between the landlord and his tenant vis-a-vis the land. From the date of commencement of this Act, all the occupancy tenants in the old areas have become owners of their tenancy land. The small landowners are entitled to reserve land for personal cultivation up to one and a half acres irrigated and three acres un-irrigated land. The non-occupancy tenants in such affected holdings will simultaneously become owners of the remaining tenancy land. The rest of the non-occupancy tenants (including sub-tenants) will become owners of their tenancy land on payment of nominal compensation. The Act tends to protect rights in land of certain weaker sections of the society including widows, un-married woman or if married divorced or separated from husband, a minor, a person with permanent physical or mental disability etc. because of which he cannot cultivate the land himself and also a person under detention or imprisonment shall not be liable for the ejection. Besides, there were also 4,22,145 non-occupancy tenants in the State, out of which 3,79,676 became owners by virtue of conferment of proprietary rights upon them. The remaining non-occupancy tenants could not benefit from the provisions of the Act as they happened to belong to the protected categories.

- **Restriction on Purchase of Agricultural Land :**

Section 118 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972 imposes patent restrictions on transfer of land in favour of those non-agriculturists who do not cultivate land personally in an estate situated in Himachal Pradesh. The Act interdicts nonagriculturalists from procuring/ purchasing any agricultural land in the state so as to discourage speculations in agricultural land.¹⁰

Section 118 of the H.P. Tenancy and Land Reforms Act, 1972 provides for restriction on transfer of land in favour of a person who is not an agriculturist of the State. This Section and rules thereunder have been amended from time to time to further the basic intention behind its enactment of protecting the interests of local inhabitants while ensuring that the development of the State is not hampered. A number of instructions and clarifications have been issued to assist

¹⁰ ILR (1978) 7 Him. 355.

in decisions by the field staff on the various queries which arise in relation to interpretation of various definitions and provisions.¹¹

Extract of Section 118 of the H.P. Tenancy and Land Reforms Act, 1972(as amended upto 2012)

118. Transfer of land to non-agriculturists barred¹².- (1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including transfer by a decree of a civil court or for recovery of arrears of land revenue) by way of sale, gift, will, exchange, lease, mortgage with possession, creation of a tenancy or in any other manner shall be valid in favour of a person who is not an agriculturist. Explanation.- For the purpose of this sub-section, the expression “transfer of land” shall not include,-

- (i) transfer by way of inheritance;
- (ii) transfer by way of gift made or will executed, in favour of any or all legal heirs of the donor or the testator, as the case may be;
- (iii) transfer by way of lease of land or building in a municipal area; but shall include-
 - (a) a benami transaction in which land is transferred to an agriculturist for a consideration paid or provided by a non-agriculturist; and
 - (b) an authorization made by the owner by way of special or general power of attorney or by an agreement with the intention to put non-agriculturist in possession of the land and allow him to deal with the land in the like manner as if he is a real owner of that land.

(2) Nothing in sub-section

(1) shall be deemed to prohibit the transfer of land by any person in favour of.-

(a) a landless labourer, or

¹¹ MAN SINGH, PARAMETERS OF EXERCISING ADMINISTRATIVE DISCRETION UNDER THE HIMACHAL PRADESH TENANCY AND LAND REFORMS ACT, 1972: A CRITICAL REVIEW(Unpublished Ph.D. Thesis, Himachal Pradesh University, Shimla, 2009).

¹² The Himachal Pradesh Tenancy and Land Reforms Act, 1972 (Act 8 of 1972)

(b) a landless person belonging to a scheduled caste or a scheduled tribe; or

(c) a village artisan; or

(d) a land less person carrying on an allied pursuit; or

(dd) a person who, on commencement of this Act worked and continues to work for gain in an estate situated in Himachal Pradesh; for the construction of a dwelling house, shop, or commercial establishment in a municipal area, subject to the condition that the land to be transferred does not exceed:- a. in case of dwelling house - 500 square metres; and b. in the case of shop or commercial establishment – 300 square metres: Provided that such person does not own any vacant land or a dwelling house in a municipal area in the State;

(e) the State Government or Central Government, or a Government Company as defined in section 617 of the Companies Act,1956 or a Company incorporated under the Companies Act, 1956 for which land acquired through the State Government under the Land Acquisition Act,1894, or a statutory body or Corporation or Board established by or under a statute and owned and controlled by the State or Central Government;

(f) a person who has become non-agriculturist on account of-

(i) acquisition of his land for any public purpose under the Land Acquisition Act, 1894; or

(ii) vestment of his land in the tenants under this Act; or ;

(g) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop, from the Himachal Pradesh State Housing and Urban Development Authority, established under the Himachal Pradesh Housing and Urban Development Authority Act,2004, or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act,1977 or from any other statutory Corporation set up for framing and execution of house accommodation schemes in the State under any State or Central enactment, or

(h) a non-agriculturist with the permission of the State Government for the purposes that may be prescribed:

Provided that that a person who is non-agriculturist but purchases land either under clause (dd) or clause (g) or with the permission granted under clause (h) of this sub-section shall, irrespective of such purchase of land, continue to non-agriculturist for the purposes of this Act: Provided further that a non-agriculturist who purchases land under clause (dd) or in whose case permission to purchase land is granted under clause (h) of this sub-section shall put the land to such use for which the permission has been granted within a period of two years or a further such period not exceeding one year, as may be allowed by the State Government for reasons to be recorded in writing, to be counted from the day on which the sale deed of land is registered and if he fails to do so or diverts, without the permission of the State Government, the said use for any other purpose or transfer by way of sale, gift or otherwise, the land so purchased by him shall, in the prescribed manner, vest in the State Government free from all encumbrances;

38-A. Purpose for which land is transferable under section 118(2)(h).-

(1) Where a non-agriculturist intends to acquire land in his name by way of sale, gift, will, exchange, lease or mortgage with possession, he shall apply for permission under clause (h) of sub-section (2) of section 118 of the Act, in Form LR-XIV duly supported with the documents specified, to the Collector in whose jurisdiction the land is situated. [(2) (a) On receipt of the application, complete in all respect under sub-rule (1), the Collector shall examine the same and if he is of the opinion that the application should be accepted, he shall recommend the same to the State Government for consideration within a period of 30 days from the date of receipt. The Collector shall ensure that all relevant information and documents, specified in Form LRXIV, are available and in order before making recommendation. If documents are not in order, he shall return the application to the person concerned with a specific order: Provided that if there is any objection or shortcoming in the application Form LR-XIV, the Collector shall convey such objection(s) or shortcoming(s) at one time only, to avoid unnecessary delay]. (b) On receipt of the recommendations made by the Collector under clause (a) of this sub-rule, the State Government shall consider the application and allow or [reject the application within [30 days]: (c) The applicant shall be informed of every order passed by the State Government under clause (b) of this sub-rule; and (d) Any applicant, whose application has been rejected, may, within 60 days of the date of order of rejection, apply to the State Government to review the order and the Government may, after making such further inquiry as it may think fit, pass such order as it

considers necessary: Provided that the State Government may entertain the review application after the expiry of the said period of 60 days, if it is satisfied that the applicant was prevented by sufficient cause from filing the review application in time.

- **The Himachal Pradesh Ceiling on Land Holdings Act, 1972 :**

Immediately, on merger of areas from the Punjab after 1st November 1966, the pursuance of land reforms necessitated the codification of a uniform tenancy law for both old and merged areas. In the meantime, at national level the Government of India appointed Central Land Reforms Committee. Thereafter the Government of India issued guidelines for imposing Land Reform Legislations 1972 envisages a ceiling on land holdings with a view to controlling concentration of land in a few hands, and to subsequently distribute surplus land among the landless.

The Act provides ceiling on land holdings beyond permissible area and bars future acquisitions beyond the limit prescribed under the Act. The ceiling is for a family of husband, wife and three minor children. The surplus area above the ceiling was vested in the state government, which was distributed among the landless agricultural laborers and eligible persons i.e. to those persons whose holdings do not exceed one acre.¹³

CASES

The Himachal Pradesh High Court in **Chuhniya Devi v. Jindhu Ram**¹⁴ held that the Himachal Pradesh Tenancy and Land Reforms Act, 1972 aims at bringing about measures of land reforms, apart from consolidating law relating to tenancies. It is one of the Acts included in the ninth schedule. In **Kala Devi and Ors. v. Satpal and Ors.**¹⁵ High court held that long standing entries in favour of plaintiff showing himself in possession over suit land as tenant, makes him owner of land by operation of law under Section 104 of the Himachal Pradesh Tenancy and Land Reforms Act, 1972. In case of **Pankaj Kumar v. Jeetender**

¹³ The Himachal Pradesh Ceiling on Land Holdings Act, 1972 (Act 19 of 1973), ss. 4, 6

¹⁴ 1991 (1) Shim. L.C. 223

¹⁵ 2011 (1) Shim. L.C. 336

Kumar & Ors.¹⁶ grant of nautor land was set aside due non fulfillment proper procedure i.e. NOC from forests and P.W.D have not been obtained as provided under Rule 14 and 15 of the Himachal Pradesh Nautor Land Rules, 1968. Another important judgment came in **Tarsem Lal & Ors. v. Ram Swarup & Ors.**¹⁷ where honorable high court recognized right to water of tenant which cannot be terminated by landlord.

In **Bahadur v. Bratiya & Others**¹⁸ honorable Himachal Pradesh High Court held that daughters in the tribal areas in the State of Himachal Pradesh shall inherit the property in accordance with the Hindu Law and principle of equality as enshrined in Preamble and Article 14 of the Constitution be achieved. This judgment is also noted for its extensive reliance on the mandate of International Declarations and Conventions, most notably the Convention on Elimination of all Forms of Discrimination against Women (CEDAW) and the Universal Declaration of Human Rights that call for gender just legal systems and equal rights for women.

CONCLUSION

To summarize, Land reform is the major step taken by government to assist people living under adverse conditions. It is basically redistribution of land from those who have excess of land to those who do not possess, with the objective of increasing the income and bargaining power of the rural poor. Though land reforms in Himachal Pradesh have not brought about any revolutionary changes in the agrarian structure yet it shall not be fair to term these as insignificant and a futile exercise. The near absence of landlessness in the state could be attributed to the positive effect of the land reforms despite the fact that the disparities in the ownership continue to persist. The composite effect of the land reform legislations, distribution of cultivable waste land among the poor peasants and the landless during 1970 under the Himachal Pradesh Nautor Land Rules,¹⁹ 1968 and some rural development programs like 20 point programes, Small Farmers Development Agency (SFDA) and Marginal Farmers and Agricultural Labourers (MFAL) scheme and other rural development programs contributed to

¹⁶ 2010 (3) Shim. L.C. 562.

¹⁷ 2015 (1) Shim. L.C. 237.

¹⁸ ILR 2015(III) HP 1259.

¹⁹V. D. MAHAJAN, MODERN INDIAN HISTORY (S. Chand & Company Ltd., New Delhi, 17th edn., 2005).

the agricultural growth and socio-economic improvement of the people particularly the small and marginal farmers and those belonging to the Scheduled Castes and Scheduled Tribe.