



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA
CWP No.20737 of 2025
Decided on: 01.07.2026

Rattan SainPetitioner
Versus
State of H.P.Respondent

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹ Yes

For the Petitioner: Mr. Chander Shekhar Chauhan,
Advocate.
For the Respondent: Mr. Anup Rattan, Advocate General
with Mr. Sikandar Bhushan, Deputy
Advocate General.

Jyotsna Rewal Dua, Judge

Petitioner seeks direction to the respondent-
State Education Department to return him possession of
the land given by his grandfather about 50 years ago to the
respondent- State Education Department for the purpose of
running a Government school. Prayer has been made on
the factual assertion that school is not being run on the
land in question, therefore, the purpose for which the land
was given, has been abandoned by the State.

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

2. Heard learned counsel for the parties and considered the case file.

2(i) The case set up by the petitioner is that his grandfather 'gave' his owned land comprised in Khewat No. 89/81, Khatauni No. 224/216 min, Khasra NoS. 913 and 914, measuring 00-01-20 & 00-00-94, hectares respectively, situated at Sub Tehsil Dhamwari, Kanungo Circle Dhamwari, Patwar Circle Sindhasali, District Shimla. The land was given to the respondent- State Education Department for running a Government Primary School at the native village of the petitioner's grandfather. The State Education Department opened Government Primary School Gokaswari over the aforesaid land, which was later upgraded as Middle School, which continued in old dilapidated two rooms building. During the year 2017, aforesaid Middle School was closed by the respondent- State Education Department there being nil student enrolment. This was due to the fact that Government Senior Secondary School had become operational at Dhamwari, at walking distance from the closed Middle School. On 17.08.2024, respondent- State Education Department also closed down the Primary School Gokaswari because of non-availability of students. Teaching staff of the aforesaid

school was shifted to the Government school at Dhamwari. A Government Primary School is running just adjacent to the Government Senior Secondary School Dhamwari.

2(ii) Petitioner's case is that by the closure of the Government Primary School Gokaswari, for which petitioner's grandfather had parted with his land, the purpose for giving the land to the Government was defeated/abandoned; Petitioner's grandfather had given his land to the respondent-State Education Department only for running the Government school in the interest of welfare of the villagers as at that time, no school was in existence in the area for the villagers and students; The Government Primary School Gokaswari functioned over this land till 17.08.2024 In view of closure of school due to non-availability of students and availability of Government Primary School as also the Senior Secondary School in the vicinity i.e. at Dhamwari, petitioner served legal notice to the respondent- State Education Department on 29.08.2025 for giving him back the possession of the land in question. Failure of the respondent to do the needful compelled the petitioner to institute this writ petition for grant of following substantive relief:-

“1. That the appropriate writ may kindly be issued, with the Prayer that the Piece of the land which is given by the owner of the land to the concerned government Education department was only for the purpose of running the government school at his native village. Now the school is closed by the concerned Government Education department in year 2024 because of the non availability of the student. The purpose of giving the land to the Education department by the owner of the land, is defeated, as the government Education department ordered the closure of the school. To see and take this fact into the consideration may kindly passed an order to giving the possession of the land to the owner of the land and may also passed the order of the appropriate disposal of the dilapidated two rooms building of the school and as the Hon'ble High court may thinks fit, in the interest of justice.”

2(iii) Respondent in its reply has pleaded that:-

(i) The land was donated/gifted by the petitioner's grandfather to the respondent- State Education Department about 50 years ago for the purpose of running a Government Primary School. In view of the said objective and in public interest, the respondent-State Education Department had established Government Primary School Gokaswari, which remained functional for a period of about 50 years; (ii) The Government took administrative/ policy decision for merger of various schools in the State having five or less than five students

enrolment, with the nearest schools. Additionally, some schools with zero student enrolment have been de-notified. Consequently, Government Primary School Gokaswari was merged on 17.08.2024 with nearby school namely GCPS Dhamwari, District Shimla due to low student enrolment. Vacant rooms of the Government Primary School Gokaswari (GPS) have been handed over by the Directorate of Education on 25.09.2025 to Anganwari Kendra Ambani on temporary basis.

At this is stage, it will be relevant to notice counter averments made by the petitioner in rejoinder that Anganwari Center in question was previously being run in a building just adjacent to Government Primary School Gokaswari; Anganwari Center has been ordered to be shifted to GPS Gokaswari by the respondent on 25.09.2025 only after the respondent-State Education Department received the legal notice dated 20.08.2025, from the petitioner seeking possession of his land. This shifting was ordered in order to defeat petitioner's rightful claim.

3. Consideration

3(i) Respondent-State Education Department has not disputed the land in question having been given to

them by petitioner's grandfather. It is also not disputed by the respondent that purpose for giving the land was to run Government Primary School thereupon. It is the pleaded case of the respondent that Government Primary School Gokaswari functioned over the land in question for about 50 years, but this school was closed on 17.08.2024 and now stands merged with an adjoining school i.e. GCPS Dhamwari, District Shimla. The record demonstrates that respondent decided to utilize the land of the petitioner for running Anganwari Kendra Ambani after receipt of legal notice from him, seeking possession of his land.

3(ii) To retain possession of petitioner's land, the respondent has fallen back upon Section 126 of the Transfer of Property Act, 1882, (the Act in short), that reads as under:-

"126. When gift may be suspended or revoked.—

The donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked; but a gift which the parties agree shall be revocable wholly or in part, at the mere will of the donor, is void wholly or in part, as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract, it might be rescinded.

Save as aforesaid, a gift cannot be revoked.

Nothing contained in this section shall be deemed to affect the rights of transferees for consideration without notice.”

Learned Deputy Advocate General submits that petitioner's grandfather had gifted the land to the respondent-State Education Department; Though there is no record available with the respondent as to the kind of deed that was made between the owner of the land and the Education Department at the time of opening of the school, however, in absence of any revocation or reversion clause in the gift deed, the gift deed has become absolute and irrevocable in terms of Section 126 of the Act.

The above submission cannot be accepted. This is for the following reasons:-

Petitioner does not admit the land in question having been 'gifted' by his grandfather to the respondent-State Education Department. According to his pleaded case, the land was 'given' by the petitioner's grandfather to the Education Department for running Government Primary School. Petitioner's assertions are to be believed to be correct as the jamabandi for the year 2020-21, placed on record as Annexure P-1, reflects that even as on date, the land in question is being recorded though in possession of

respondent-State Education Department, but under the ownership of petitioner's father to the extent of shares recorded therein alongwith other co-owners/family members. Had the land been gifted in accordance with law to the respondent-State Education Department, the ownership of the land in question would have been mutated in favour of the respondent. Further the respondent-State Education Department in its reply admits there being no record available with them about the gift deed, which is alleged to have been executed by the grandfather of the petitioner. At this juncture, it would be relevant to take note of Section 123 of the Transfer of Property Act, which mandates that for the purpose of making gift of immovable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor and attested by at least two witnesses. The provision is as under:-

"123. Transfer how effected.—

For the purpose of making a gift of immoveable property, the transfer must be effected by a registered instrument signed by or on behalf of the donor, and attested by at least two witnesses.

For the purpose of making a gift of moveable property, the transfer may be effected either by a registered instrument signed as aforesaid or by delivery. Such delivery may be made in the same way as goods sold may be delivered."

The above is also to be co-related to Section 17 of the Registration of Act, 1908, which makes instruments of gift of immovable property compulsorily registrable. Relevant provision of this Section is as under:-

“17. Documents of which registration is compulsory.—

(1) The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act No. XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely:—

(a) instruments of gift of immovable property”

In view of above provisions of Transfer of Property Act and the Registration Act, respondent's defence for opposing handing over the possession of property to the petitioner on account of there being no provision for revocation or reversion clause in the gift deed, falls flat. There being no gift deed on record, question of providing/existence of provision for revocation or reversion clause therein does not arise.

Gomtibai (Smt) (Dead) through LRs and others Vs. Mattulala (Dead) through LRs² holds that there can be no gift of immovable property without a

² (1996)11 SCC 681

written instrument which is also compulsory registrable. It is only in such eventuality that donor would lose title to the property and valid transfer shall be effected. Portion relevant from this decision reads as under:-

“4. Thus, it is seen that the gift of immovable property should be made only for transferring the right, title and interest by the donor to the donee by a registered instrument signed by or on behalf of the donor and must be attested by at least two witnesses. The pre-existing right, title and interest of donor thereby stand divested in the donee by operation of Section 17 of the Registration Act only when the gift deed is duly registered and thereafter the donor would lose title to the property. It must also be proved that the donee had accepted the property gifted over under the instrument. In this case, though the transfer of gift was acted upon by Kusturibai as per the correspondence and evidence on record, but, admittedly, there is no written instrument executed by the donor, namely, the plaintiff and the defendant in favour of their cousin sister Kusturibai and it was got attested by at least two witnesses and registered in accordance with the provisions of the Stamp Act and the Registration Act. In the absence of compliance of these formalities, at best what could be seen from the partition deed is that the original plaintiff and the defendant have expressed their intention to gift over the land to their cousin sister Kusturibai. As held earlier, in the absence of any registered instrument of gift and acceptance thereof by the donee, the said property could not be said to have been legally transferred in favour of their cousin sister; in other words, the gift is not complete in the eye of law. Therefore, the District Court has rightly set aside the decree of the trial court which was later confirmed by

the High Court. We do not find any error of law warranting interference.”

It appears that respondent at best is projecting the case of an oral gift allegedly made by petitioner's grandfather, however, in view of the provisions of Section 123 of the Transfer of Property Act, there can be no oral gift of the immovable property. Further gift of immovable property cannot confer any title to the beneficiary unless and until the written gift deed is registered.

3(iii) It will also be beneficial to refer to some relevant provisions of the Indian Easements Act, 1882. Section 60 of this Act provides for revocation of licence as under:-

“60. License when revocable:-

A license may be revoked by the grantor, unless—

- (a) it is coupled with a transfer of property and such transfer is in force;*
- (b) the licensee, acting upon the license, has executed a work of a permanent character and incurred expenses in the execution.”*

Section 62 provides for deemed revocation of the licence in given situations:-

62. License when deemed revoked.—A license is deemed to be revoked—

- (a) when, from a cause preceding the grant of it, the grantor ceases to have any interest in the property affected by the license;*

- (b) *when the licensee releases it, expressly or impliedly, to the grantor or his representative;*
- (c) *where it has been granted for a limited period, or acquired on condition that it shall become void on the performance or non-performance of a specified act, and the period expires, or the condition is fulfilled;*
- (d) *where the property affected by the license is destroyed or by superior force so permanently altered that the licensee can not longer exercise his right;*
- (e) *where the licensee becomes entitled to the absolute ownership of the property affected by the license;*
- (f) ***where the license is granted for a specified purpose and the purpose is attained, or abandoned, or becomes impracticable;***
- (g) *where the license is granted to the licensee as holding a particular office, employment or character, and such office, employment or character ceases to exist; (h) where the license totally ceases to be used as such for an unbroken period of twenty years, and such cessation is not in pursuance of a contract between the grantor and the licensee;*
- (i) *in the case of an accessory license, when the interest or right to which it is accessory ceases to exist."*

In the instant case, though it is not the case of the respondent, yet even if it is assumed for argument's sake that respondent had the licence over the property, then also in view of Section 62 (f) of the Indian Easements Act, the licence having admittedly been granted for a

specific purpose i.e. for running Government Primary School Gokaswari, the purpose having been abandoned, becomes revocable. It is not even the case of the respondent that any work of permanent nature was executed over the land. No such plea at all has been taken in the reply. Reference in this regard can be made to following para of ***M.I. Builders Pvt. Ltd Vs. Radhey Shyam Sahu and others***³ :-

*“67. Section 128 of the Act confers powers on the Mahapalika to sell, let out, hire, lease, exchange, mortgage, grant otherwise dispose of any property or any interest therein acquired by or vested in the Mahapalika. The appellant and the intervenors said that there was no disposal of any property and no interest in the land had been transferred by the Mahapalika to the builder. The respondent, as noted above, contended to the contrary. Under Section 54 of the Transfer of Property Act, 1882 agreement to sell does not create any interest in land. We are not concerned with this provision. Reference may, however, be made to Sections 60(b) and 62(f) of the Easements Act, 1882. Though the licence under Section 60(b) is irrevocable but it can be revoked after the happening of a certain event which is when the builder has recovered the whole of his investment plus 10% of the profit. Reference may be made to a decision of this Court in *Chevalier I.I. Iyyappan v. Dharmodayam Co*⁴. In this case an argument was raised by the appellant that he had been granted a licence and acting upon the licence he had executed a work of permanent character*

³ (1999) 6 SCC 464

⁴ AIR 1996 SC 1017 : (1963) 1 SCR 85

and incurred expenses in the execution thereof and, thereafter, under Section 60(b) of the Easements Act, 1882 the licence was irrevocable. This Court said:

"In our opinion no case of licence really arises but if it does what is the licence which the appellant obtained and what is the licence which he is seeking to plead as a bar. The licence, if it was a licence, was to construct the building and hand it over to the respondent Company as trust property. There was no licence to create another kind of trust which the appellant has sought to create. It cannot be said therefore that there was an irrevocable licence which falls under Section 60(b) of the Act. Even such a licence is deemed to be revoked under Section 62(f) of that Act where the licence is granted for a specific purpose and the purpose is attained or abandoned or becomes impracticable. In the present case the purpose for which the licence was granted has either been abandoned or has become impracticable because of the action of the appellant."

"52. Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would, in the absence of such right, be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a licence."

53. A licence may be granted by anyone in the circumstances and to the extent in and to which he may transfer his interests in the property affected by the licensee.

60. A licence may be revoked by the grantor, unless—

(a).....

(b) the licensee, acting upon the licence, has executed a work of a permanent character and incurred expenses in the execution.

62. A licence is deemed to be revoked—

(a) to (e)

f) where the licence is granted for a specified purpose and the purpose is attained or abandoned, or becomes impracticable."

4. The respondent-State Education Department having abandoned the purpose for which the petitioner's grandfather had parted his land in its favour, cannot be permitted to retain the land. The claim of the petitioner for getting back possession of the land in question is justified.

Accordingly, this writ petition is allowed. Respondent is directed to give the possession of the land in question back to the owners of the land. This exercise be carried within four weeks from today.

Pending miscellaneous application(s), if any, also to stand disposed of.

July 1, 2026
R.Atal

Jyotsna Rewal Dua
Judge