



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. : 2274 of 2022

Reserved on : 01.03.2023

Decided on : 03.03.2023

Sh. Amin Chand

....Petitioner.

Versus

State of Himachal Pradesh.

...Respondent.

Coram

Hon'ble Ms. Justice Sabina, Acting Chief Justice.

Hon'ble Mr. Justice Satyen Vaidya, Judge.

Whether approved for reporting?¹

For the petitioner :Mr. Divya Raj Singh, Advocate.

For the respondent :Mr. Rakesh Dhaulta, Additional
Advocate General.

Satyen Vaidya, Judge

Petitioner is facing ejection from land
comprised in Khasra No. 979/1, measuring 0-13
Marlas, owned by State Government in Tika
Badhdhar, Mauja Chabutra, Tehsil Sujampur, District
Hamirpur, H.P.

¹ Whether reporters of the local papers may be allowed to see the judgment?

2. Petitioner has been ordered to be evicted from aforesaid land, vide order, Annexure P-1, dated 23.03.2011, passed by Assistant Collector 1st Grade, Sujanpur, District Hamirpur, H.P., in proceedings under Section 163 of The Himachal Pradesh Land Revenue Act, 1954 (for short 'The Act'). The order of ejectment passed by Assistant Collector 1st Grade, Sujanpur, has been upheld by appellate as well as revisional authorities.

3. Sub Divisional Collector, Hamirpur, dismissed the appeal of the petitioner vide order Annexure P-2 dated 30.08.2011. Petitioner assailed the order of Sub Divisional Collector, Hamirpur, passed in appeal, before Commissioner, Mandi Division, by filing revision petition under Section 17 of the Act, but remained unsuccessful as his revision petition was dismissed on 11.09.2015 vide order Annexure P-3. Petitioner further approached Financial Commissioner (Appeals) Himachal Pradesh, by way of Revision Petition No. 125/2015, but again remained unsuccessful as the second revision petition of the

petitioner was also dismissed by the Financial Commissioner (Appeals), vide order dated 17.01.2022, Annexure P-4.

4. Petitioner has taken exception to the order of eviction passed against him by Assistant Collector 1st Grade, Sujanpur and affirmed as above, mainly on the ground that the Assistant Collector 1st Grade, Sujanpur, had failed to exercise jurisdiction vested in him under law by not converting himself as a Civil Court to decide the question of adverse possession raised by the petitioner. As per petitioner, the appellate and revisional authorities have also erred in affirming the eviction order by ignoring the omission committed by the Assistant Collector 1st Grade, Sujanpur.

5. In reply filed on behalf of the respondents, it has been admitted that the petitioner had raised the plea of adverse possession before Assistant Collector 1st Grade, Sujanpur. However, the order passed by the said authority and orders passed by the appellate and

revisional authorities have been defended being legal and in accordance with law.

6. We have heard learned counsel for the parties and have also gone through the records of the case carefully.

7. A copy of order of eviction dated 23.03.2011, passed by Assistant Collector 1st Grade, Sujapur, has been placed on record as Annexure P-1. Its perusal reveals that Assistant Collector 1st Grade, Sujapur, had noticed the defence plea of adverse possession raised by the petitioner in his reply submitted to the show cause notice issued to him under Section 163 of the Act. It is also evident from the order dated 23.03.2011, passed by Assistant Collector 1st Grade, Sujapur, that the petitioner herein, had been proceeded against *ex parte* on 07.03.2011.

8. Despite, having noticed aforesaid plea raised by the petitioner, Assistant Collector 1st Grade, Sujapur, proceeded to pass the order of eviction without showing compliance to the provisions of sub-

Sections 3 to 6 of Section 163 of the Act, which read as under:-

“163:

(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, may proceed to determine the question, as if he were a civil court and shall exercise all such powers as are exercisable by a civil court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 (5 of 1908) to be specified therein.

(5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if

the High Court is satisfied that a substantial question of law is involved.”

9. The mandate of sub-Sections 3 to 6 of Section 163 of the Act, is imperative. Though, for adjudicating the plea of adverse possession, discretion is vested with the Assistant Collector 1st Grade either to convert itself as a Civil Court or to decide it otherwise, nonetheless, the discretion so vested is judicial discretion and cannot be exercised capriciously. The said authority exercises quasi-judicial functions under section 163 of the Act, therefore, discretion mandatorily is required to be exercised objectively. The Assistant Collector 1st Grade has to elaborate reasons, in case he decides against option to convert itself to a Civil Court.

10. Reverting to the facts of the case, the Assistant Collector 1st Grade, Sujanpur, while passing the impugned order of eviction, has miserably failed to comply with obligatory requirement of sub-Section 3 of Section 163. No reason whatsoever has been assigned for not converting itself as a Civil Court even after

noticing the specific plea of adverse possession raised by the petitioner. Thus, there is no hesitation to hold that the said authority has failed to exercise the jurisdiction vested in it by law.

11. Similarly, the orders passed by appellate and revisional authorities also suffer from illegality, in as much as, all such authorities have ignored the illegal omission committed by Assistant Collector 1st Grade, Sujampur. The appellate authority rejected the contention of the appellant/petitioner herein, raised in this regard, on the ground that the appellant/petitioner herein, had been proceeded against *ex-parte*. The reason, so assigned, by the appellate authority, is not legally sustainable for the reason that Assistant Collector 1st Grade is bound to comply with sub-Section 3 of Section 163 of the Act, when the plea of adverse possession is raised before it. The fact that the noticee under Section 163 of the Act, had been proceeded against *ex parte* after raising such plea, does not absolve the authority from performing its legal obligation.

12. The Commissioner, Mandi Division, vide impugned order, Annexure P-3, in the aforesaid circumstances, clearly erred in holding that the petitioner herein, had failed to show, at what time, his possession become adverse to the true owner and how that was of a hostile nature. Such finding returned by the first revisional authority is clearly illegal, as the petitioner herein, had no chance to prove his contention.

13. Similarly, the impugned order, Annexure P-4, passed by the second revisional authority also, cannot be sustained, as it had also ignored the illegality committed by the Assistant Collector 1st Grade, Sujanpur.

14. In view of above discussion, the petition is allowed. Order dated 23.3.2011 (Annexure P-1), passed by Assistant Collector 1st Grade, Sujanpur; order dated 30.08.2011 (Annexure P-2), passed by Sub Divisional Collector, Hamirpur H.P; order dated 11.09.2015 (Annexure P-3), passed by Commissioner, Mandi Division and order dated 17.01.2022 (Annexure

P-4), passed by Financial Commissioner (Appeals), Himachal Pradesh, are set aside. It is, however, clarified that the Assistant Collector 1st Grade, Sujanpur, District Hamirpur, H.P., will not be precluded from concluding the proceedings under Section 163 of the Act, against petitioner herein, after strictly adhering to the provisions of sub-Sections 3 to 6 of section 163 of the Act.

15. The petition is accordingly, disposed of, so also the pending miscellaneous application(s) if any.

(Sabina)
Acting Chief Justice

(Satyen Vaidya)
Judge

3rd March, 2023
(sushma)