

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 207 of 2018

Date of decision: 17th Sept., 2024

Neeta Ram

...Petitioner.

Versus

State of H.P. & Another.

...Respondents.

Corum

Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

Hon'ble Mr. Justice Bipin C. Negi, Judge.

Whether approved for reporting?¹ Yes

For the Petitioner : Mr. Desh Raj Thakur, Advocate.

***For the Respondents: Mr. Anup Rattan, Advocate General with
Mr.Varun Chandel, Additional Advocate
General.***

Vivek Singh Thakur, Judge (Oral)

Petitioner, in present case, has assailed order dated 09.10.2017, passed by the Divisional Commissioner, Shimla Division, Shimla in case No. 39 of 2017, titled as Neeta Ram vs. State of HP, whereby his eviction from the Government/Forest land comprising RF Kandon Bharog C-1, measuring 11-12-0 bighas situated at Kandon Bharog, Tehsil Paonta Sahib, District Sirmaur as directed vide order dated 28.10.2016, passed in Case No. GNR-19/2013 by Collector-cum-Divisional Forest Officer, Paonta Sahib, Forest Division, Paonta Sahib, District Sirmaur, H.P., has been affirmed.

¹*Whether the reporters of the local papers may be allowed to see the Judgment? Yes*

2 For initiating the proceedings under H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971, (in short 'PP Act') Show Cause Notice was issued to petitioner under Section 4(1) of PP Act. Before the Collector, petitioner had denied his unauthorized occupation of forest land with further submissions that for involvement of serious question of law and facts in the complaint, matter was required to be determined by the Civil Court as the possession of the petitioner was visible, open, continuous, peaceful and hostile to the knowledge of Forest Department and all other concerned since the last more than 30 years. It was also contended that eviction proceedings were time barred, without any valid and legal cause of action and in violation of principles of natural justice.

3 Learned counsel for petitioner has submitted that petitioner is claiming title on land concerned on the basis of adverse possession.

4 Petitioner had also made statement before the Forest Block Officer concerned, which had been reproduced in the order passed by the Divisional Commissioner, wherein petitioner had expressed his satisfaction to the demarcation by stating that since last more than 35 years, he was in possession of land and he had developed fields, constructed permanent house and cowshed on the land and had also sown the crop of wheat. He had also admitted his signatures on the damage report register and had also stated that whatever decision shall be taken by the Government, would be acceptable to him.

5 Denial of unauthorized possession of land is contradicted by the claim of petitioner for claim of acquiring title by way of adverse possession. So far as claim on the basis of adverse possession is concerned, in view of statement made before the Forest Block Officer, it is apparent that petitioner was admitting that State was owner of land in reference.

6 Even otherwise for defending the title on the basis of adverse possession, appropriate proceedings have not been initiated by the petitioner at any point of time. Such claim of petitioner was not adjudicateable under the summary proceedings under PP Act and, therefore, it was incumbent upon the petitioner, if he was claiming title on the basis of adverse possession, to take appropriate steps to establish the same by approaching the competent Court having the jurisdiction to adjudicate the said claim/issue.

7. Learned counsel for petitioner has submitted that statement recorded by Block Forest Officer has no sanctity as it was never put to the petitioner as evidence during pendency of case under PP Act.

8. Be that as it may, even if above referred statement is ignored then also petitioner has failed to take appropriate steps to establish his claim as well as title on the basis of adverse possession by approaching appropriate Forum. Therefore, on discarding the aforesaid statement, for

material on record, entitlement of petitioners or their predecessor-in-interest for title and possession is not established on record.

9 It is also noticeable that during pendency of present petition, petitioner had filed affidavit dated 9th March, 2018 admitting therein his possession over the Government/Forest land with undertaking to surrender the encroached area if he was found in possession of more than 5 bighas of such land. This affidavit is anti-thesis to the plea of adverse possession taken by petitioner during the proceedings under PP Act.

10 As observed by this Court in its order dated 17.7.2024, passed in CWP No. 1028 of 2002 and connected petitions including present petition, adjudication of CWP No. 1028 of 2002 regarding validity of Section 163(A) of the Himachal Pradesh Land Revenue Act, 1953 and Himachal Pradesh Regulation and Encroachment (in certain cases) of Government Land and Disposal of Government Land Rules, 2002, shall have no impact in the present matter, because in the absence of approval of the Central Government or for want of pendency of any request for such approval of the Central Government, the forest land cannot be put to a use, which is a non-forest purpose, as also has been defined and explained in Section 2 of Forest Conservation Act, 1980, clarifying that breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticulture crops or medical plants and even any

(2024:HHC:8907)

purpose other than reafforestation, shall amount to using such land for non-forest purpose.

11. After going through the record, impugned order and averments made in the petition and also considering the submissions made by learned counsel for the petitioners, we do not find any merit in the petition and accordingly the same is dismissed.

12. Consequentially, concerned Revenue Officers, including Tehsildar concerned and Forest Authorities, including DFO concerned, are directed to identify the Government/forest land encroached by the petitioners properly and take possession of the encroached Government/forest land by fixing permanent boundary marks of the Government land on or before **11th November, 2024** and compliance affidavit with respect to taking of possession on the spot, be filed by the concerned Divisional Forest Officer on or before **18th November, 2024**.

13. The concerned authorities are also directed to remove other encroachment(s) from the Government/Forest land detected/found on the spot during demarcation/identification of the land in reference by taking appropriate action in accordance with law in time bound manner, to the maximum within six months from the date on which such encroachment is found/detected.

14. Improvements/structures, if any, made on the encroached land shall vest in the State of Himachal Pradesh/Department and shall be

(2024:HHC:8907)

utilized by the State/Department for its use. In case petitioner/encroacher intends to take away the fixtures/building material/debris for his own use, he may opt for that in writing, but in that eventuality he shall take away the material of the structure before **10th January 2025** at his own cost.

15. It is made clear that in case petitioner/encroacher opts to take away the fixtures/building material/debris for his own use, apart from movable articles, it will not give him right to continue with the possession of the encroached land and/or structure/building raised on the said land. On exercising such option, petitioner/encroacher has to remove entire material, including debris, to hand over the vacant possession of the land and, thereafter, he shall have to obtain No Objection/Clearance Certificate about complete removal of everything from the spot whereupon illegal structure had been raised.

16. In case, he removes fixtures/material only leaving behind the debris/remains of the building on the spot, in the Government land, the same shall be removed by the Department but on the expenses of the petitioner/encroacher and on failure to pay such costs/expenditure, the same shall be recovered from the petitioner/encroacher/successor-in-interest as arrears of land revenue.

17. Aforesaid extended time is applicable to immovable property, but not to movable articles. However, in special circumstances movable

(2024:HHC:8907)

articles may be taken within reasonable time, say 5 to 7 days, after initial last date of vacation/taking over possession of the land/property.

18. Any dereliction in performing compliance of aforesaid direction or laxity to remove encroachment from Government/Forest land shall be taken seriously and consequential adverse action/proceedings shall ensue.

19. Entire aforesaid proceedings shall be video graphed and copy of videography be placed on record with affidavit.

20. Learned Advocate General is directed to bring this order in the notice of the Chief Secretary to the Government of Himachal Pradesh, for ensuring timely compliance.

The petition is disposed of, so also pending application(s), if any, in aforesaid terms.

List for compliance on **25th November, 2024**.

**(Vivek Singh Thakur),
Judge.**

**(Bipin C. Negi),
Judge.**

17th September, 2024
(ms)