IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 345 of 2017

Date of decision: 13.08.2024

Rajinder Singh **…Petitioner.**

Versus

State of H.P. & others **…Respondents.**

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

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

Whether approved for reporting?[1]

For the Petitioner : ***Mr. Manohar and Ms. Mamta K. Bhatwan, Advocates, vice Mr. B.N. Sharma, Advocate.***

For the Respondents: ***Mr. Anup Rattan, Advocate General, alongwith Mr. Baldev Negi, Additional Advocate General.***

Vivek Singh Thakur, Judge (Oral)

Petitioner, in present case, has assailed order dated 05.12.2016, passed by the Divisional Commissioner, in Appeal No. 418 of 2016, titled as Rajender Singh vs. State of H.P. and others, whereby his eviction from the Government/forest land comprising Khasra No. 227, 228, 534, 649, 771/1 measuring 0-84-95 hactare in Mauja Mangyare, Tehsil Chirgaon District Shimla H.P., as directed vide order dated 28.03.2016, passed by Collector-cum-DFO, Rohru Forest Division Rohru, H.P., in case No. 1672/2016, has been affirmed.

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

2. Learned counsel for the petitioner has submitted that in present case land has not been properly identified by conducting valid demarcation.

3. From the record, it is apparent that petitioner had submitted an application for regularisation of his unauthorized occupation on the land in reference and the said case/application was submitted by the Revenue Authorities to the office of Divisional Forest Officer for regularisation.

4. From the record, it is apparent that the petitioner had confessed before the Collector-cum-DFO that he had encroached upon the aforesaid forest land.

5. During pendency of present petition, an affidavit dated 20.10.2018, has been filed by the petitioner, stating therein that he is owner in possession of land to the extent of 2 bighas and that during demarcation he was found to have encroached upon about 5 bighas of forest land. He has further stated in the affidavit that he is in possession of total 7 bighas of land, including 5 bighas of encroached land, and that he belongs to a BPL and Landless family. He has also stated in the affidavit that the excess land, i.e. in excess of 5 bighas, had already been surrendered by him.

6. From the material on record, confession made by the petitioner before the Collector-cum-DFO, and the affidavit submitted by the petitioner, it is apparent that he is in unauthorized possession of forest land.

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7. In view of order to be passed herein after, grievance of the petitioner with respect to demarcation would be redressed as the concerned Authority, for proper identification of the land in reference, shall have to demarcate the land in accordance with law.

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

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

10. Consequentially, concerned Revenue Officers, including Tehsildar concerned and Forest Authorities, including DFO concerned, are directed to identify the Government/forest land encroached by the petitioner properly and take possession of the encroached Government/forest land by fixing permanent boundary marks of the Government land on or before **15th October, 2024** and compliance affidavit with respect to taking of possession on the spot, be filed by the concerned Divisional Forest Officer on or before **30th October, 2024**.

11. 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.

12. Improvements/structures, if any, made on the encroached land shall vest in the State of Himachal Pradesh/Department and shall be 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 **15th December 2024** at his own cost.

13. 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 Non Objection/Clearance Certificate about complete removal of everything from the spot wherefupon illegal structure had been raised.

14. 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.

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

16. 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.

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

18. 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 **5th November, 2024.**

(Vivek Singh Thakur),
Judge.

(Bipin C. Negi),
Judge.

13th August, 2024
(tarun)