

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 369 of 2017

Date of decision: 04.09.2024

Gopi Devi and others

...Petitioner.

Versus

State of H.P. & others

...Respondents.

Corum

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. Virender Singh Chauhan, Senior Advocate, alongwith Ms. Bhanvi Negi, Advocate.

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

Vivek Singh Thakur, Judge (Oral)

Petitioner, in present case, has assailed order dated 06.10.2016, passed by the Divisional Commissioner, Shimla in Appeal No. 87 of 2016, titled as Gopi Devi Vs. State of H.P and another, whereby his eviction from the Government/Forest Land comprising Khasra Nos.1396, 1390, 1391, 1397/1, 1397/2 and 1389/1 measuring 1-07-14 hectare, situate in U.P.F Badhal, Revenue Village Bhdhal, Tehsil Jubbal, District Shimla, as directed vide order dated 28.01.2009, passed by Collector-cum-DFO, Rohru Forest Division Rohru, H.P., in case No. 53/99-2000 has been affirmed.

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

2. On the basis of report submitted by the Forest Guard, Range Forest Officer had filed the encroachment case before the Collector-cum-Divisional Forest Officer, Rohru, wherein show cause notice was issued under Section 4 of the Public Premises & land (Eviction & Rent Recovery) Act, 1971 (P.P. Act).

3. As per record, petitioners had defended themselves personally by stating that he had sown agricultural crop and raised apple orchard over the encroached land and they were in possession since long and they did not agree to vacate the land voluntarily. Evidence was also led on behalf of department.

4. After taking into consideration the material before the Collector, he had observed that petitioner had failed to place on record any proof of the long/adverse possession and accordingly eviction of the petitioners from the land in reference was ordered

5. It is submitted on behalf of the petitioners that they were not granted sufficient time to file a reply to the notice issued by the DFO-cum-Collector and, therefore, there is breach of Principles of Natural Justice (PNJ).

6. The eviction order was passed in the year 2009. Petitioners had preferred appeal against the said order in the year 2016 on various grounds, which was dismissed as referred (supra) on 06.10.2016, and thereafter petitioners have preferred present writ petition in March, 2017.

7. Even if petitioners were not given sufficient time by the Collector for filing reply, it is apparent from the record that they remained associated in the eviction proceedings wherein they admitted their possession on the land in reference with stand that they shall not vacate the possession from the land in reference.

8. In an appeal preferred before the Divisional Commissioner and also as argued by the learned counsel for the petitioners in present writ petition, it has been claimed that had the petitioners been given time to file reply, they would have set up the claim for adverse possession on the land on account of long possession and further that the land abutting to the land in reference belongs to the petitioners, which had been allotted to them under the Special Policy and that the land had not been identified properly by conducting a proper demarcation.

9. Learned counsel for the petitioner referring notification dated 18.04.2022 issued by the Department of Forest, Himachal Pradesh, has contended that there is proposal of Revenue Department to consider the Government lands other than lands declared as protected forest in surveyed (settled) areas out of purview of Chapter IV of Indian Forest Act 1927. He has further submitted that a Committee has been constituted by the Forest Department to examine the aforesaid proposal of Revenue Department. Learned counsel further contended that when the Revenue Department and Forest Department itself are considering to bring the land not falling in the Demarcated Protected Forest out of purview of the Indian

Forest Act, eviction proceedings would not have been initiated against the petitioners and, therefore, in any case, possession of the petitioners deserves to be protected on this count.

10. Alongwith the aforesaid notification, petitioners have also produced a letter dated 31st March, 2022, sent by Principal Secretary-cum-FC (Revenue) to the Additional Chief Secretary (Forest) to the Government of Himachal Pradesh, stating therein that since it is a forest land related issue, it would be difficult to take any decision by the departments without concurrence/permission of Government of India by raising the issue with Ministry of Environment and MoEF&CC, Government of India.

11. So far as long possession is concerned, it is settled that only long possession cannot entitle anyone to claim for continuing the unauthorized possession on any property including the forest land. The ingredients of adverse possession have neither been pleaded in appeal nor in petition. In any case, if the petitioners were claiming the right on the basis of adverse possession then remedy would have lied somewhere else but not under the P.P. Act.

12. So far as proposal of Revenue Department and constitution of Committee by the Forest Department, referred supra, are concerned, it does not give any right to any person to continue unauthorized possession on Government/Forest land, as no such decision has been brought in our notice so as to entitle the petitioners to continue with unauthorized possessing on the forest land for proposal referred supra.

13. The grievance of the petitioners with respect to proper demarcation shall be redressed by the concerned authorities, for the order being passed hereinafter, as the concerned authorities are being directed to dispossess the encroachers after identifying the land properly and which definitely ensue that there would be a proper demarcation of the land for dispossessing the encroachers from it.

14. It is apt to record that during pendency of present petition, petitioner No.1 Gopi Devi had filed an affidavit dated 6th October, 2018 admitting the encroachment on the government land with undertaking to surrender the encroached land if they were found in excess of unauthorized possession of more than 5 bighas of government land. This affidavit is definitely antithesis to the plea of adverse possession on the government land for claiming the tile over the land. Therefore, also the plea of non-adherence of Principles of Natural Justice by the DFO concerned becomes irrelevant and redundant.

15. In view of the material on record, plea taken by the petitioner and the affidavit filed in this Court during pendency of the petition, it is apparent that the petitioners are in unauthorized possession of the Forest land.

16. 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.

17. 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.

18. 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**.

19. 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.

20. 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.

21. 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.

22. 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.

23. 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.

24. 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.

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

26. 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.

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

List for compliance on **05th November, 2024.**

(Vivek Singh Thakur),
Judge

(Bipin C. Negi),
Judge.

5th September, 2024
(tarun)