

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 623 of 2017

Date of decision: 24.7.2024

Anant 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

For the Petitioner : Mr. Kul Bhushan Khajuria, 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 12.12.2016, passed by the Divisional Commissioner, in case No. 280 of 2016, titled as Anant Ram Vs. State of H.P. and others, whereby his eviction from the Government forest land, comprising Khasra Nos. 360, 361, measuring 0-87-40 hectare, situated in Mauja UF Sanaba, Tehsil Jubbal, District Shimla, as directed vide order dated 25.4.2016, passed by Collector-cum-Divisional Forest Officer, Forest Division, Rohru, District Shimla, H.P., in case No. 18/2008, has been affirmed.

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

2. In its order, the Collector-cum-Divisional Forest Officer has recorded that petitioner confessed his unauthorized occupation of forest land in mauja U.F. Sanaba, comprising Khasra Nos. 360 and 361 measuring 0-87-40 hectares. The main grievance of the petitioner, as it appears from the record of petition, is that demarcation was not conducted in his presence and the Collector-cum-Divisional Forest Officer was not having jurisdiction to even issue a notice under Section 4 of Public Premises and Land (Eviction and Rent Recovery) Act, 1971, because land involved in the proceedings was forest land, with further submissions that Divisional Forest Officer was authorized to initiate the proceedings under the Act in respect of the encroachment of land only where there was specific entry of forest department in the revenue record and land was declared as DPF or reserved Forest under the Indian Forest Act.

3 It is apt to record that after filing objection by petitioner with respect to jurisdiction, he did not take any step including approaching the High Court under Article 227 of Constitution of India for quashing the proceedings initiated against him, rather tone and tenor of plea of petitioner indicates that he was and is in possession of land in reference in Undemarcated Forest Sanaba. By taking into consideration the plea raised by him, his appeal has been dismissed by the Divisional Commissioner, Shimla.

4 It is also relevant to record that in compliance of orders dated 11th April, 2017 and 22nd May, 2017, passed by this Court, petitioner had

filed an affidavit that he was in possession of land, in reference, comprised in Khasra Nos. 360 and 361 and was willing to retain the total land comprised in Khasra No. 360 measuring 0-1-12 upon which his forefather had constructed residential house and also willing to retain the land comprised in Khasra No. 361 upto 5 bighas, boundaries of which are adjacent to agriculture land comprised in Khasra No. 362 and he was ready and willing to surrender the rest of land beyond 5 bighas in Khasra No. 361. The aforesaid affidavit also indicates the confession and admission of possession of forest land by petitioner.

5. 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.

6. 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.

7. 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 **31st August, 2024** and compliance affidavit with respect to taking of possession on the spot, be filed by the concerned Divisional Forest Officer on or before **16th September, 2024**.

8. 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.

9. 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 30th October, 2024 at his own cost.

10. 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.

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

13. 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 **23rd September, 2024.**

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

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

24th July, 2024
(ms)