

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 935 of 2017

Date of decision: 4.9.2024

Khushi Lal (since deceased) through LRs. ...Petitioners.

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 Petitioners: Mr.Y.P. Sood, Advocate, for the petitioners.

***For the Respondents: Mr.Anup Rattan, Advocate General, alongwith
Mr.Pawan K. Nadda, Additional Advocate
General.***

Vivek Singh Thakur, Judge (Oral)

Amended memo filed in the Court, be taken on record at appropriate place.

2. Petitioner, in present case, has assailed order dated 12.12.2016, passed by the Divisional Commissioner, in Appeal No. 464 of 2016, titled as Khushi Lal Vs. State of H.P. & Another, whereby his eviction from the forest land comprising Khasra 2634/6, measuring 0-72-74 hectares in Mauja U.F. Diswani, Tehsil Rohru, District Shimla, H.P., as directed vide order dated

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

21.6.2016, passed by Collector-cum-Divisional Forest Officer, Rohru, Forest Division Rohru, H.P., in case No. 50 of 2016, has been affirmed.

3. Present petition was initiated by Khushi Lal, who had expired during pendency of the petition and his legal heirs have been brought on record as petitioners No. 1(a) to 1(f) respectively vide order dated 12.8.2024.

4. Proceedings under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act 1971 (PP Act) were initiated by the Collector-cum-Divisional Forest Officer, Rohru on receiving encroachment case against Khushi LaL predecessor-in-interest of the petitioners for unauthorised occupation of land referred supra. Forest Guard/Incharge of Diswani beat has also prepared the damage report, which was placed on record. Khushi Lal had confessed the unauthorised occupation of the aforesaid forest land. However, he had also raised the plea that his land is also situated adjacent to the above referred encroached land and, therefore, without proper demarcation, it would not be possible to identify the encroached land from the land owned by Khushi Lal. However, in this respect no evidence was led by Khushi Lal to show that he has any private land abutting to the land in reference.

5. In any case, for the order being passed hereinafter, whereby authorities are directed to take possession of the unauthorised land after proper identification, the grievance of the petitioners in this respect shall be

redressed by the concerned Officer by demarcating the land by associating the petitioners.

6. It is also apt to record that by filing affidavit dated 6.10.2018, Khushi Lal had admitted the encroachment on the forest land with submission that he would be retaining 5 bighas of encroached land with undertaking to surrender the possession of anyother land in excess to 5 bighas of land. Therefore, encroachment on forest land is at writ large on the basis of admitted fact by Khushi Lal.

7. 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.

8. 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.

9. 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**.

10. 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.

11. 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.

12. 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.

13. 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.

14. Aforesaid extended time is applicable to immovable 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.

15. 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.

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

17. 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.**

4th September, 2024
(Keshav)