

-IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 3212 of 2016

Date of decision: 07.08.2024

Sant Ram

...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. Karan Singh Kanwar, 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 28.10.2015, passed by the Divisional Commissioner, in Appeal No. 10 of 2013, titled as Sant Ram Vs. State of H.P., whereby his eviction from the Government/forest land comprising Khatauni No. 98/374 min Khasra No. 1212/4 (7-05 bighas) comprising of Reserve Forest RF Gatta Mandwach C-3 at Village Gatta Bagri, P.O. Sangna, Tehsil Sangrah, District Sirmour, H.P., as directed vide order dated 17.12.2012, passed by Collector-cum-DFO Renuka Ji, H.P., in case No. 4/Sg/2012-13, has been affirmed, by dismissing the appeal in default.

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

2. Learned counsel for the petitioner submitted that though no reply has been filed by the petitioner in response to the Notice issued to him under Section 4 of the PP Act, however, the witnesses of the State were cross examined by him and petitioner had also appeared as a witness in witness box in defence, but the said cross examination as well as deposition of the petitioner have not been taken into consideration.

3. In absence of the reply, petitioner could have cross examined witnesses of the State, and that was allowed by the Collector. However, in the absence of any pleading on record, the deposition of the petitioner as a witness is of no help of the petitioner.

4. Moreover, the encroachment on the land in reference has been admitted by the petitioner by filing affidavit dated 19th May, 2017 in furtherance to order dated 11.04.2017 passed by this Court, wherein it has been stated by the petitioner that he is in possession of land comprised in Khasra No. 1212/4 measuring 7-05 bigha situated in Mauza Gatta Mandwach, Tehsil Renukaji District Sirmaur and out of that he will surrender 2-05 bigha of land by retaining 5 bigha of the land as per proposed Government Policy.

5. As the policy so proposed in the year 2017 is not being pursued by the State and there is no proposal for allowing such retention of 6 bighas of land and otherwise also for the provisions of Forest Conservation Act, the State Government is not empowered to do so without approval of the Central Government, and there is no policy pending before

the Central Government for such approval, the petitioner has no right to continue unauthorized possession of the Forest Land in reference.

6. 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.

7. 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.

8. 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 **30th September, 2024** and compliance affidavit with respect to taking of possession on the spot, be filed by the concerned Divisional Forest Officer on or before **15th October, 2024**.

9. 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.

10. 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 November, 2024 at his own cost.

11. 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.

12. 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 **16th October, 2024.**

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

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

07th August, 2024
(tarun)

