

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**CWP No. 3437 of 2024****Reserved on : 02.12.2025****Decided on: 29.12.2025**

Pawan Kumar

... Petitioner

Versus

The State of Himachal Pradesh and others

... Respondents

Coram***Hon'ble Mr. Justice Ajay Mohan Goel, Judge.*****Whether approved for reporting?¹**

For the petitioner : M/s Sumesh Raj and Vinod Kumar
Thakur, Advocate.

For the respondents : Mr. Pushpender Jaswal, Additional
Advocate General for respondents-
State.

: Mr. Vishal Singh Thakur, Advocate for
respondents No. 6 and 7.

Ajay Mohan Goel, Judge

By way of this writ petition, the petitioner has *inter alia*
prayed for the following reliefs:-

*“a. The writ in nature of certiorari may kindly be passed
quashing the order dated 15.01.2024 passed by the L.d.
Financial Commissioner (Appeals) Annexure P-13 whereby he
upheld the order of the Collector Sub Division Nadaun District
Hamirpur H.P. dated 16.11.2023 Annexure P-9 in Revenue
Appeal Case No. 50 of 2023 Pawan Kumar Versus Ashish Singh
Chaudhary and anr., upholding the order passed by the*

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

Assistant Collector 2nd Grade (N.T.)Nadaun dated 20.10.2023 (Annexure P-7) in Partition Case No. 41/2018 titled as Ashish Singh Chaudhary vs 2074shwar Dass (rejecting the applications raising the question of title as also transfer of mater to AC Ist Grade have been dismissed.

b. Writ in the nature of mandamus be also passed directing the AC IInd Grade Nadaun, District Kangra to transfer the application filed by the petitioner raising the question of title to AC Ist Grade Nadaun with further directing the said authority to decide the said application in accordance with the law.”

2. In terms of the order passed by the learned Financial Commissioner (Appeal), dated 15.01.2024, the revision petition preferred by the petitioner under Section 17 of the H.P. Land Revenue Act, 1954, against the order passed by the Sub Divisional Collector, Nadaun, stands rejected.

3. Brief facts necessary for the adjudication of this petition are that according to the petitioner, in the year 2002, General Zorawar Singh Smarak Samiti, Dhaneta, started a public school in the building of the petitioner on rent in the name and style of ASSD Public School, Gawal Pather. In the year 2013, the same was upgraded to 10+2. As per the petitioner, in light of the school being upgraded, one Ashish Singh Choudhary, approached the petitioner with an offer to construct the building required for upgradation of the

school and a gift deed was executed by his father late Shri Ishwar Dass on 26.08.2014 through his GPA i.e. present petitioner in favour of respondent No. 6 qua land measuring 230 square metres. A two storeyed building was constructed thereupon in the year 2016. As per the petitioner, in the year 2018, the school authorities informed the father of the petitioner that Ashish Singh Choudhary has fraudulently grabbed the school from the school authorities by misrepresentation and by misleading the Education Department. In the month of April, 2019, the school was closed for one year by the government authorities. Thereafter, in the year 2020, the school authorities provided late father of the petitioner a copy of inquiry report which was conducted by the Education Department, in terms whereof, according to the petitioner, he gained knowledge that respondent Ashish Singh Choudhary tried to grab the income of his late father which was in violation of the purpose for which the gift deed was executed. The petitioner accordingly filed a civil suit, assailing the gift deed in terms of Annexure P-2. Further according to the petitioner, in the month of June 2018, (i.e. before the filing of the civil suit), private respondent moved an application for partition of the land under Section 123 of the Land Revenue Act and the petitioner filed an application raising the question of title therein under Sections 128 and 129 of the H.P. Land Revenue Act read with

the provisions of Land Record Manual and requested for transferring the case to the Assistant Collector 1st Grade, however, said application was rejected by the Assistant Collector 2nd Grade on 20.10.2023. The appeal preferred by the petitioner against the order passed by Assistant Collector 2nd Grade was dismissed by the Sub Divisional Collector on 20.10.2023. The matter was further assailed by way of a revision and interim order were passed therein staying further proceedings which was pending before the learned Assistant Collector 2nd Grade. The case was listed on 22.03.2024, however, an early hearing application was filed by respondent No.2 on 12.01.2024 and the matter was preponed for 12.01.2024 and heard by learned Financial Commissioner (Appeals) and order was reserved. The appeal was dismissed in terms of the impugned order by the Financial Commissioner on 15.01.2024 and after the petitioner came to know of the order, the present petition has been filed.

4. Learned Counsel for the petitioner *inter alia* argued that the impugned order was not sustainable in law for the reason that there was no occasion for preponing of the case by the learned Financial Commissioner and this was done by the authority arbitrarily. Learned Counsel further submitted that otherwise also on meirt, the order passed by the Authority was not sustainable as the learned Authority erred in not appreciating that as the lower

authorities had erred in dismissing the application of the petitioner, therefore, the impugned order passed in revision was liable to be set aside.

5. On the other hand, learned Counsel for the private parties has supported the order passed by the learned Financial Commissioner by *inter alia* submitting that the contention of learned Counsel that pre-ponement was done in an arbitrary manner is completely misconceived for the reason that even after the pre-ponement of the case, the parties were heard on merit and if there was any issue with regard to the pre-ponement, then learned Counsel should have raised it before the Revisional Authority itself. On merit also, learned Counsel submitted that the learned Financial Commissioner has upheld the order passed by both the authorities below and this was correctly done by the Financial Commissioner as there was no infirmity in the orders passed by the authorities. Accordingly, he submitted that in exercise of power of its judicial review, as there was no occasion for this Court to interfere with the order, the present petition be dismissed.

6. I have heard learned Counsel for the parties and have also carefully gone through the pleadings including the orders under challenge.

7. Record demonstrates gift deed in issue is dated 26.08.2014 and a suit for revocation of the gift deed has been filed by the present petitioner in the year 2020. This court would not like to make any further observation qua the civil suit save and except that father of the petitioner late Shri Ishwar Dass did not seek revocation of the gift deed during his life time and the Court was informed that Shri Ishwar Dass died much after the execution of the gift deed.

8. Be that as it may, as far as the controversy involved in the present case is concerned, the record demonstrates that on the basis of gift deed, an application for partition was filed by Shri Ashish Singh Choudhary in the month of June, 2018. In this, besides others, Shri Ishwar Dass and the present petitioner, were parties. In these proceedings, petitioner filed an application raising the question of title in the month of October, 2023, i.e. after five years of the filing of the partition application. The plea raised in the application was that he had filed a suit for revocation of the gift deed and therefore, the issue of title was pending adjudication before the Civil Court and therefore, the partition proceedings be referred to the Assistant Collector 1st Grade to decide the question of title.

9. In terms of Annexure P-7, dated 20.10.2023, the Authority dismissed this application by holding that there was no question of title involved in the matter. The appeal filed against this

order by the present petitioner was also dismissed by the Appellate Authority vide Annexure P-9, dated 16.11.2023.

10. Feeling aggrieved, the petitioner filed the revision petition which has been dismissed by the learned Financial Commissioner in terms of impugned order dated 15.01.2024. While dismissing the revision petition, learned Revisional Authority has returned the following findings:-

“5. I have considered the arguments put forth on behalf of the parties and have gone through the contents of the revision petition as well as the writ submissions made on behalf of the respondents. Main contention of the petitioner is that the question of title is involved in the land under partition and as such the partition cannot be carried out unless and until the question of title is decided by the competent court of jurisdiction. From perusal of the record attached with the revision petition, it is clear that a Civil suit No.386/2023 has been instituted in the Court of Senior Civil Judge, Nadaun, District Hamirpur for revocation of gift deed No.770 dated 28.08.2014 of land comprised in Khata No.71. Khatauni No.97. Khasra No.643 measuring 00-31-11 hectares to the extent of 2/27 shares, measuring 00-02-30 hectares, situated in village Takroon Mauza Hathol, Tehsil Nadaun, District Hamirpur, with consequential relief of permanent prohibitory injunction restraining the defendant from alienating the same

by way of executing the sale deed, mortgage etc. and change the nature of the suit land. It appears that the said civil suit is still pending adjudication, but, there is nothing on record to suggest that the Civil Court has stayed the partition proceedings in any manner. The record also shows that the application for partition of land comprised in Khata No. 14, Khatauni No.22, 23, 24 Khasru Nos. 637, 63, 6-410, 054, 648, 643,646, 645, 649, Kita 9, measuring 00-73-88 hectares, situated at Mohal Takroon, Mauza Hathol Tehsil Nadaun District Hamirpur, was moved by the present respondent No.1, on 2.6.2018, before the AC 2nd Grade. The mode of partition was drawn in the matter on 29.10.2018 and thereafter partition was finalized on 24.09.2019. The present petitioner and his father had filed an appeal against the aforesaid order of the AC 2nd Grade, before the Ld. Collector, who had accepted the same vide order dated 30.03.2022 and remanded the matter to the AC 2 Grade. The present respondent had challenged the order dated 30.03.2022, passed by the Ld. Collector by filing an appeal No.223/2022, before the Ld. Divisional Commissioner, Mandi Division, who, dismissed the same, vide order dated 26.06 2023, with the direction to Trial Court to carry out partition strictly in accordance with the Mode of partition already framed so as to complete the partition proceedings within two months from the first hearing. When the AC 2nd Grade, proceeded to partition

the land in dispute in compliance of the order dated 26.06.2023, passed by the Ld. Divisional Commissioner, Mandi, the present petitioner moved an application raising the question of title on 20.10.2023, before the AC 2nd Grade, who rejected the same on the same day. The present petitioner filed appeal against this order before the Ld. Collector, who has dismissed the same vide order dated 29.11.2023. Hence, the present revision petition. Thus, it is clear from the aforesaid discussion that on the partition application moved by the present respondent No.1, mode of partition has already been devised, which has not been challenged by any of the parties. The present petitioner has raised the question of title at this belated stage, whereas as per law, the question of title can only be raised at initial stage ie. before preparation of mode of partition. From the contents of the revision petition and record attached therewith, it is clear that in the instant case, no such question was raised by the present petitioner or his predecessor-in-interest at the relevant point of time. Not only this, the order dated 26.06.2023, whereby the Ld. Divisional Commissioner, had remanded the matter to the AC 2nd Grade with the direction to complete the partition proceedings within a period of two months from the date of first hearing, has not been challenged by any of the parties. This shows that the present petitioner is trying to prolong the partition proceedings on one pretext or the other. The civil suit has also been filed by

him now, when the partition proceedings are going on in the field that too after remand. Thus, the AC 2nd Grade, vide his order dated 20.10.2020, has rightly rejected the application of the present petitioner, whereby he (present petitioner) had raised the question of title. The Ld. Collector has also rightly rejected the appeal (Case No.50/2023) of the present petitioner, vide order dated 29.11.2023.”

11. It is evident from the order passed by the learned Financial Commissioner that in the partition proceedings, the mode of partition was drawn on 29.10.2018. Thereafter, the partition was finalized on 29.04.2019. The appeal filed by the petitioner and his late father against the order passed by Assistant Collector 2nd Grade before the Collector was accepted on 30.03.2022 and the matter was remanded back to the Assistant Collector 2nd Grade. This was assailed by the private respondent herein before the Divisional Commissioner, Mandi. The appeal was dismissed by the Divisional Commissioner, Mandi, on 26.04.2023 with the direction to Assistant Collector 2nd Grade to carry out partition strictly in accordance with the mode of partition already framed so as to complete partition proceedings within two months. Thereafter, when the Assistant Collector 2nd Grade proceeded to partition the land in compliance to the order passed by learned Divisional Commissioner, Mandi, the present petitioner filed an application raising the question of title.

Learned Financial Commissioner rejected the revision petition and upheld the order passed by the authorities below by inter alia holding that the issue of title was not only raised at a belated stage but the predecessor-in-interest of the petitioner, never raised this issue during his lifetime. Learned Financial Commissioner also held that after the learned Divisional Commissioner remanded the matter back and directed the first authority to decide the case within two months, said order was not assailed by any of the parties. On these counts, learned Financial Commissioner held that the intent of the petitioner was only to prolong the partition proceedings.

12. This Court is of the considered view that the order passed by the learned Financial Commissioner calls for no interference. It is a matter of record that whereas the partition proceedings were initiated in the year 2018, in which father of the petitioner was also a respondent, no plea of issue of title being involved was raised at the initial stage either by the petitioner or his father who in fact had gifted the property to the private respondent. Not only this, it was belatedly at the stage when the matter was again pending before the Assistant Collector 2nd Grade post remand by the Divisional Commissioner with the direction that the matter be decided within two months that this application raising issue of title was filed by the present petitioner in the year 2023.

13. During the course of hearing of this petition, it could not be explained by learned Counsel for the petitioner as to why the issue of title was raised after five years. Now, one more thing which this Court cannot lose sight of is the fact that during his lifetime, the father of the petitioner never filed any suit for revocation of the gift deed and it was only after his death that his son, i.e. present petitioner, filed this suit. Therefore, all this demonstrates that the filing of the application was nothing but an afterthought and a tactic deployed by the petitioner to prolong the proceedings. Otherwise also, in the light of the fact that there is a gift deed in favour of the private respondent and till date, no Court has held that the gift deed is bad in law, no question of title can be said to be involved in the partition proceedings.

Accordingly, in light of above discussion, as this Court does not find any merit in the present petition, the same is dismissed. Pending miscellaneous applications, if any, also stand disposed of accordingly.

(Ajay Mohan Goel)
Judge

December 29, 2025
(narender)