

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

**CWP No. 8863 of 2025
Decided on: 26.08.2026**

Mathra Devi

.....Petitioner

Versus

State of H.P. and others

..Respondents

Coram

Ms. Justice Jyotsna Rewal Dua

Whether approved for reporting?¹

For the Petitioner: Mr. H.S. Rangra, Advocate.

For the Respondents: Ms. Menka Raj Chauhan, Deputy
Advocate General.

Jyotsna Rewal Dua, Judge

Assistant Collector First Grade, Tehsil Sadar, District Mandi, on 06.04.2023, ordered the ejectment of the petitioner from the subject land, exercising powers under Section 163 of the H.P. Land Revenue Act, 1954 (the Act in short). The order was not interfered with by the Sub-Divisional Collector, Sadar, District Mandi. Petitioner's appeal was dismissed on 04.10.2023. The revision petition preferred by the petitioner against the aforesaid order was also dismissed on 05.02.2025 by the Financial Commissioner (Appeals), H.P. Feeling aggrieved, the petitioner has preferred this writ petition against the three

¹Whether reporters of print and electronic media may be allowed to see the order? Yes.

concurrent orders passed against her by the Revenue Authorities.

2. Heard learned counsel for the parties and considered the case file.

3. The case set up by the petitioner was that she had executed an agreement to purchase the subject land from Raja Joginder Sen; She was the owner of the land in dispute prior to the merger of the Mandi Princely State into the Union of India; Settlement operations were carried out in the area, and the name of Raja Joginder Sen was wrongly removed from the column of ownership in the revenue record. His name was reflected only in the column of possession as "Bila Sift". According to the petitioner, as canvassed by his learned counsel, their predecessor had moved an application before the Settlement Collector for correction of the revenue entries in favour of Raja Joginder Sen. The application was statedly pending adjudication. Learned counsel further submitted that the petitioner had purchased the land in dispute from Raja Joginder Sen and, therefore, could not be termed as encroacher; The petitioner has, even otherwise, perfected his title by way of adverse possession over the land. These aspects were not gone

into by the learned Revenue Courts below while deciding the proceedings under Section 163 of the Act against the petitioner.

Learned Deputy Advocate General defended the impugned orders.

4. Having considered the submissions made on behalf of the parties and upon going through the case file, I am not inclined to interfere with the concurrent orders passed by the three revenue authorities.

4(a) It is the pleaded case of the petitioner that she had only executed an agreement to sell/purchase the subject land with Raja Joginder Sen. No conveyance deed was ever executed in favour of the petitioner, nor any such deed was placed on record.

4(b) It is also a matter of record that the subject land is owned by the State of Himachal Pradesh. In the column of possession, there is an entry in the name of Raja Joginder Sen, son of Kishan Singh, son of Man Singh, as "Bila Sift", i.e. without any right, title or interest whatsoever. Given this, once Raja Joginder Sen did not possess any right, title or interest in the subject land, he could not have conveyed any title in favour of the petitioner.

4(c) Significantly, it is not the case of the petitioner that Raja Joginder Sen ever laid challenge to revenue record. Petitioner's claim of adverse possession was also rightly rejected by the authorities. In the facts and circumstances of the case, the pleas of adverse possession and purchase of the land could not have been taken together, as both run contrary to each other. Further, mere long possession otherwise also cannot be termed as adverse possession. Adverse possession has to be hostile to the real owner. The real owner is State of Himachal Pradesh and not Raja Joginder Sen. In this regard, it will be profitable to refer to following paras from ***Narasamma & Ors. Vs. A. Krishnappa (Dead) Through Legal Representatives***² : -

“32. The question which confronts us is not the aforesaid, but whether simultaneously a plea can be taken of title and adverse possession, i.e., whether it would amount to taking contradictory pleas. In this behalf, we may refer to the four judgments cited by learned counsel for the respondent herein, which succinctly set forth the legal position.

33. In Karnataka Board of Wakf case³, it has been clearly set out that a plaintiff filing a title over the property must specifically plead it. When such a plea of adverse possession is projected, it is inherent in the nature of it that someone else is the owner of the property. In that context, it was observed in para 12 that “....the pleas on title and

²(2020) 15 SCC 218

³Karnataka Board of Wakf Vs. Union of India, (2004)10 SCC 779, para 11

adverse possession are mutually inconsistent and the latter does not begin to operate until the 9(supra) former is renounced....”

34. The aforesaid judgment in turn relied upon the judgment in Mohan Lal⁴ , which observed in para 4 as under:

“4. As regards the first plea, it is inconsistent with the second plea. Having come into possession under the agreement, he must disclaim his right thereunder and plead and prove assertion of his independent hostile adverse possession to the knowledge of the transferor or his successor in title or interest and that the latter had acquiesced to his illegal possession during the entire period of 12 years, i.e., upto completing the period of his title by prescription nec vi, nec clam, nec precario. Since the appellant's claim is founded on Section 53-A, it goes without saying that he admits by implication that he came into possession of the land lawfully under the agreement and continued to remain in possession till date of the suit. Thereby the plea of adverse possession is not available to the appellant.”

35. In order to establish adverse possession an inquiry is required to be made into the starting point of such adverse possession and, thus, when the recorded owner got dispossessed would be crucial⁵

36. In the facts of the present case, this fact has not at all been proved. The possession of Smt. Narasamma, the wife of the defendant, is stated to be on account of consideration paid. Assuming that the transaction did not fructify into a sale deed for whatever reason, still the date when such possession becomes adverse would have to be set out. Thus, the plea of adverse possession is lacking in all material particulars.

37. The possession has to be in public and to the knowledge of the true owner as adverse, and this is necessary as a plea of adverse possession seeks to defeat the rights of the true owner. Thus, the law

⁴Mohan Lal vs. Mirza Abdul Gaffar (1996) 1 SCC 639

⁵P.T. Munichikkanna Reddy vs. Revamma, (2007)6 ScC 59

would not be readily accepting of such a case unless a clear and cogent basis has been made out⁶.

38. We may also note another judicial pronouncement in *Ram Nagina Rai & Anr. v. Deo Kumar Rai*⁷ dealing with a similar factual matrix, i.e., where there is permissive possession given by the owner and the defendant claims that the same had become adverse. It was held that it has to be specifically pleaded and proved as to when possession becomes adverse in order for the real owner to lose title 12 years hence from that time.

39. The legal position, thus, stands as evolved against the appellants herein in advancing a plea of title and adverse possession simultaneously and from the same date.”

The above principles were reiterated in

Mallikarjunaiah Vs. Nanjaiah & Ors.⁸ as under: -

“18. What is “adverse possession” and on whom the burden of proof lies and what should be the approach of the Courts while dealing with such plea have been the subject-matter of a large number of cases of this Court.

19. In *T. Anjanappa & Ors. vs. Somalingappa & Anr.*⁹, this Court held that mere possession, howsoever long it may be, does not necessarily mean that it is adverse to the true owner and the classical requirement of acquisition of title by adverse possession is that such possessions are in denial of the true owners’ title.

20. Relying upon the aforesaid decision, this Court again in *Chatti Konati Rao & Ors. vs. Palle Venkata Subba Rao*¹⁰, in para 14 held as under:

“14. In view of the several authorities of this Court, few whereof have been referred above, what can safely be said is that mere possession however long does not necessarily mean that it

⁶*M. Siddiq (Ram Janmabhumi temple-5 J.) v. Suresh Das* (2020) 1 SCC 1

⁷(2019) 13 SCC 324.

⁸(2019)15 SCC 756

⁹(2006) 7 SCC 570

¹⁰(2010) 14 SCC 316

is adverse to the true owner. It means hostile possession which is expressly or impliedly in denial of the title of the true owner and in order to constitute adverse possession the possession must be adequate in continuity, in publicity and in extent so as to show that it is adverse to the true owner. The possession must be open and hostile enough so that it is known by the parties interested in the property. The plaintiff is bound to prove his title as also possession within twelve years and once the plaintiff proves his title, the burden shifts on the defendant to establish that he has perfected his title by adverse possession. Claim by adverse possession has two basic elements i.e. the possession of the defendant should be adverse to the plaintiff and the defendant must continue to remain in possession for a period of twelve years thereafter."

21. Keeping in view the law relating to the adverse possession quoted above, when we examine the case at hand, we have no hesitation in holding that the Courts below were not justified in holding that the defendants have perfected their title over the suit land qua the plaintiff by virtue of their adverse possession over the suit land. This we say for the following reasons....."

4(d) Learned counsel for the petitioner also submitted that, since the petitioner had raised question of title, the Revenue Court was bound to convert itself into a Civil Court for adjudication of the case. This plea, too, deserves to be rejected.

Section 163 of the H.P. Land Revenue Act reads as under:-

"163. Prevention of encroachment on lands.-
(1) Where Government land or land which has been reserved for the site of village or for the common purposes or uses of the estate right holders or of the co-sharers therein, has been encroached upon

by any person or co-sharer for any purpose including construction of a building or other structures or by planting trees therein, then-

(a) the Revenue Officer may of his own motion or on the report of patwari of the circle duly verified by the Kanungo of the Circle or on the application of any estate right holder or co-sharers, after giving reasonable opportunity of being heard, shall eject him from such land by order 4 [within six months from the date of taking of cognizance or from the date of receipt of such report or from the date of filing of such application, as the case may be, however, the period may further be extended upto three months for the reasons to be recorded in writing], in the manner prescribed;

(b) if the encroacher has erected any building or other structure or has planted trees on the encroached land, the same shall, in the prescribed manner, vest in the State Government free from all encumbrances:

Provided that if the building or structure attachments thereto are situated partly in the owned land of the encroacher and partly on the encroached land, the Revenue Officer shall be competent to demolish the portion of the building or structure on the encroached land if the encroacher fails to demolish it himself as ordered by the Revenue Officer; and

(c) the Revenue Officer shall impose upon the encroacher a fine upto Rs. 1 [20,000/- or the prevalent market value of the land, whichever is higher] per bigha or part thereof, which shall be recoverable, as if it were an arrear of land revenue.

(2) If a person who has been evicted from any land under this section again occupies the land without authority for such occupation, he shall be punished with imprisonment for a term which may extend to one year, or with fine which may extend to fifty thousand rupees or double the prevalent market value of the land, whichever is higher rupees or with both:

Provided that no court shall take cognizance under this subsection of an offence unless a report in writing is made by a Revenue Officer not below the rank of Assistant Collector First Grade.

(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejectment is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, may proceed to determine the question, as if he were a civil court and shall exercise all such powers as are exercisable by a civil court.

(4) For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court, and he shall record a judgement and decree containing the particulars required by the Code of Civil Procedure, 1908 (5 of 1908) to be specified therein.

(5) An appeal from the decree of the Revenue Officer made under sub-section (4) shall lie to the District Judge as if that decree were a decree of a Subordinate Judge in an original suit.

(6) A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved.

(7) No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this section in respect of anything in good faith done or purported to have been done under the provisions thereof or the rules made thereunder.

Explanation.- For the purposes of this section, any person who holds land under a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expiry of the period of lease shall be deemed to be encroacher unless such person gets the lease extended or renewed."

By virtue of amendment carried out in Section 163(3), under the H.P. Act No.15 of 2000, the words 'shall proceed' stand replaced with the words 'may proceed'. The amendment gives discretion to the revenue officer for proceeding in the matter as a Civil Court in case plea of adverse possession is taken or question of title is raised by the alleged encroacher. This discretion though has to be exercised judiciously, reasonably and in accordance with law. It will be in place to refer to ***Manorama Devi Versus State of H.P. & others***¹¹, wherein appellant's contention was that the Assistant Collector was under legal obligation to convert himself into Civil Court once the appellant had raised the plea of having perfected title over the alleged encroached land by way of adverse possession. Hon'ble Division Bench rejected the plea as under:-

"8. It is clear from the reading of above provisions that the use of word "may" in sub section (3) of Section 163 of the Act makes it discretionary for the Assistant Collector 1st Grade either to convert itself as a Civil Court or to decide it otherwise, though, the discretion is judicial discretion and cannot be exercised arbitrarily.

9. The record reveals that respondent No.3 vide order dated 05.11.2018 had ordered the ejectment of appellant by returning a finding of fact that the appellant had failed to prove her long standing

¹¹LPA No.168 of 2024, decided on 23.12.2024.

possession of 50 years. He placed reliance on the jamabandi for the year 2014-15, besides other evidence on record to come to such conclusion. The appellate authority noted the contention of the appellant that respondent No.3 had failed to decide the question of adverse possession raised by appellant, in accordance with law and proceeded to dismiss the appeal of the appellant by upholding the finding of fact recorded by respondent No.3 and also by taking into consideration the admission allegedly made by the appellant as to encroachment carried by her.

10. The Financial Commissioner (Appeals) also noticed the contention of the appellant with respect to non-consideration of the plea of adverse possession and rejected the same by holding that mere raising of the question of title by adverse possession does not make it incumbent upon the revenue Officer to accept it as he has to ascertain and determine whether such a question in fact is involved or not. The satisfaction of Assistant Collector 1st Grade, holding proceedings under Section 163 of the Act, has been held to be sine qua non to determine the question as a Civil Court.

11. Learned writ Court has also non-suited the appellant by taking into consideration her plea in the reply before respondent No.3 that she had submitted her application for regularization of encroached land to the competent authority in the year 2002. Learned Single Judge noticed that in view of such plea, the plea of adverse possession allegedly raised by the appellant had been rendered nugatory.

12. We find no reason to disagree with the reasons assigned by the learned writ Court. Once, the appellant had admitted by way of her pleading that she had applied for regularization of encroached land to the competent authority in 2002, the plea of adverse possession was deemed to have been given up. Noticeably, as per the appellant she had allegedly perfected the title by adverse possession on the encroached land in the year 2002 itself.

13. In above discussed circumstances, no fault can be found in the proceedings of respondent No.3. Once, there was no plea of adverse possession,

respondent No.3 was not bound to exercise discretion for converting himself into a Civil Court.”

In terms of Section 163(3) of the Act, when there is a question as to title or adverse possession wherein possession over the land in question is claimed by an encroacher for a period beyond thirty years, the revenue officer not below the rank of Assistant Collector First Grade ‘may proceed’ to determine the question as if he was a Civil Court by exercising all such powers as are exercised by the Civil Court. Mere raising of the question of title or adverse possession does not make it incumbent upon the Revenue Officer to accept the plea. It is only if the Revenue Officer is satisfied that the said question arises, he has to determine the same as if he were a Civil Court, and not otherwise. The petitioner failed to establish her plea of adverse possession before the three Revenue Courts below. This plea was even destructive & ran as counter to the plea of having perfect title (ownership) over the subject land. The factual findings have been affirmed by all the Revenue Courts.

5. For the foregoing reasons, no case for interference with the impugned orders concurrently passed by all the Revenue Courts, is made out.

Accordingly, the instant petition is dismissed. Pending miscellaneous application(s), if any, also to stand disposed of.

August 26, 2026
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Jyotsna Rewal Dua
Judge