**IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA**

**CMPMO No.141 of 2024**
**Decided on: 31.10.2025**

Shri Roshan Lal ... Petitioner

**Versus**

State of Himachal Pradesh & another ... Respondents

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

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| For the petitioner | : | Mr. Mohinder Verma, Advocate. |
| For the respondents | : | Mr. R.P. Singh, Deputy Advocate General. |

**Ajay Mohan Goel, Judge** (Oral)

By way of this petition, the petitioner has challenged order dated 05.08.2023, passed by the learned Trial Court as well as the judgment dated 29.11.2023, passed by the learned Appellate Court, in terms whereof, an application filed by the present petitioner alongwith the Civil Suit, under Order 39, Rules 1 and 2 of the Civil Procedure Code was dismissed by the learned Trial Court and same was the fate of the appeal.

2. Learned Counsel for the petitioner has argued that the impugned order as well as the impugned judgment are not sustainable in the eyes of law. He has referred to the pleadings on record and submitted that in the present case, the proceedings were

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

initiated against the petitioner under Section 163 of the H.P. Land Revenue Act for his eviction from the Government land on the ground that he had encroached upon the same. Despite the fact that the petitioner took the plea of adverse possession in the reply filed to the notice received by him under Section 163 of the H.P. Land Revenue Act, the Assistant Collector did not convert itself into a Civil Court in terms of Sub-section (3) of Section 163 of the H.P. Land Revenue Act and pronounced an order against the petitioner.

3. Feeling aggrieved, the petitioner preferred an appeal as well as a revision before the Appellate and Revisional Authorities, however, both the Authorities upheld the order passed by the Assistant Collector without appreciating that there was a gross violation of the provisions of Sub-section (3) of 163 of the H.P. Land Revenue Act. In this backdrop, the petitioner has now approached the Civil Court seeking a declaration that the orders passed by the Statutory Authorities are bad in law. Learned Counsel for the petitioner submitted that alongwith the Civil Suit the petitioner also filed an application under Order 39, Rules 1 and 2 of the Civil Procedure Code, praying for the interim relief, but the said application was erroneously rejected by the learned Trial Court in terms of Annexure P-6, dated 05.08.2023, by holding that as in

terms of the revenue record the possession of the land in issue was of the State Government, there was no *prima facie* case made out in favour of the petitioner.

4. Feeling aggrieved, the petitioner preferred an appeal under Order 43, Rule 1 (r) of the Civil Procedure Code and the said appeal has been dismissed by the learned District Judge in terms of judgment dated 29.11.2023 by upholding the order passed by the learned Trial Court and by further observing that if there was a violation of the provisions of Sub-section (3) of Section 163 of the H.P. Land Revenue Act, then the plaintiff should have resorted to the provisions of Sub-section (5) of Section 163 of the H.P. Land Revenue Act by preferring an appeal before the learned District Judge and the petitioner having failed to do so, now cannot say that *prima facie* case is in his favour.

5. Learned Counsel submitted that the order as well as the judgment are bad, for the reason that once there is a flagrant violation of the statutory provisions by the Authorities concerned, there indeed exists a *prima facie* case in favour of the petitioner and balance of convenience was also in favour of the petitioner. Learned Counsel further argued that learned Trial Court as well as the learned Appellate Court erred in not appreciating that as the

petitioner indeed was in possession of the suit land, non grant of interim protection to him would have caused irreparable loss to him if he is non-suited during the pendency of the Civil Suit. Accordingly, he prayed that as the order and judgment under challenge are bad in law, the same be set aside.

6. On the other hand, learned Deputy Advocate General supported the orders by submitting that as the petitioner is a rank encroacher upon the Government land, he rightly was refused the interim, as was being prayed by him, by the learned Court below.

7. Having heard learned Counsel for the parties and having perused the impugned order as well as the impugned judgment, this Court is of the considered view that the same are not sustainable in the eyes of law.

8. As it is not in dispute that the petitioner had taken the defence of adverse possession in the reply which was filed by him to the notice served upon him under Section 163 of the H.P. Land Revenue Act, therefore, it was incumbent upon the Revenue Authority, i.e. Assistant Collector, 1st Grade, to have had converted itself into a Civil Court and proceeded with the matter thereafter, as if it was a Civil Court. Failure on the part of the Assistant Collector, 1st Grade to do so, rendered the order passed by him under cloud. null and void. As the Appellate Authority as well as Revisional

Authorities also erred in not appreciating this crucial aspect of the matter, obviously their orders also are also under cloud.

9. In these circumstances, in this case, all the ingredients which are necessary for the grant of interim relief, existed in favour of the plaintiff. This extremely important aspect of the matter stands been ignored by both the learned Courts below. Learned Appellate Authority erred in not appreciating that there was no occasion for the petitioner to have had filed any appeal before learned District Judge, in terms of Sub-section (5) of Section 163 of the H.P. Land Revenue Act, because that provision would have come into vogue had the concerned Authority converted itself into a Civil Court and then proceeded with the matter.

10. Accordingly, in light of the above observations, this petition is allowed. Orders passed by learned Trial Court, dated 05.08.2023 (P-6) and by learned Appellate Court, dated 29.11.2023 (Annexure P-8), are set aside and the parties are directed to maintain status-quo qua the possession over the suit land during the pendency of the Civil Suit. The petition stands disposed of, so also the pending miscellaneous application(s), if any.

**(Ajay Mohan Goel)**
**Judge**

October 31, 2025
(Rishi)