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

**RSA No. 392 of 2007**
**Reserved on: 12.03.2026**
**Date of Decision: 24.04.2026**

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HPSEB & others ...Appellants

Versus

Rakesh ...Respondent

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*Coram*

***Hon'ble Mr Justice Rakesh Kainthla, Judge.***

***Whether approved for reporting?[1] No.***

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| For the appellants | : | Ms Sunita Sharma, Senior Advocate with Mr Mohit Sankhyan, Advocate. |
| For the respondent | : | Mr Vinod Kumar Gupta, Advocate. |

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***Rakesh Kainthla, Judge***

The present appeal is directed against the judgment and decree dated 21.06.2007, passed by the learned Additional District Judge, Shimla, H.P. (Learned Appellate Court) vide which the judgment and decree dated 28.10.2005, passed by the learned Civil Judge (Senior Division), Chopal, District Shimla, H.P. (learned Trial Court)

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

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were set aside. (*For the sake of convenience, the parties shall be referred to in the same manner as they were arrayed before the learned Trial court.*

2. Briefly stated, the facts giving rise to the present appeal are that the plaintiff filed a civil suit before the learned Trial Court seeking a decree of permanent prohibitory injunction restraining the defendants from interfering with the land comprised in Khewat No. 125, Khatauni No. 195, Khasra No. 1336 /1287 measuring 2-4 bighas situated in Chowk Batewari Pargna. Shantha, Tehsil Chopal, District Shimla, H.P. (hereinafter referred to as the 'suit land') by excavating it for the construction of the building or in any other manner whatsoever and decree of a mandatory injunction directing the defendants to demolish and remove the structure raised upon the suit land. It was asserted that the suit land is owned and possessed by the plaintiff. The defendants started excavating and developing the suit land for constructing a building without any right to do so. The plaintiff obtained the demarcation of the suit land and found that the defendants had excavated the suit land without any right to do so. He requested

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the defendants not to carry out any excavation over the suit land, but in vain. Hence, the suit was filed to seek the relief mentioned above.

3. The suit is opposed by filing a written statement taking preliminary objection regarding the plaintiff being estopped to file the present suit by his act, conduct, omission lapses and silence, the suit being bad for non-joinder and mis-joinder of necessary parties, lack of locus standi and the maintainability, the suit being bad for want of material particulars, and the suit having not been properly valued for Court fees and jurisdiction. The contents of the plaint were denied on the merits. It was specifically denied that the defendants raised any construction over the suit land. It was asserted that the defendants completed the construction of 22 KV substation over Khasra No. 1445/1287/1, measuring 01-18 bigahs owned by the State of H.P., after getting the land demarcated from the revenue agency. One Madan Sharma also issued a notice to the defendants that the construction was raised over his land bearing Khasra No. 842. The claim made by the plaintiff is without any basis. No cause of action accrued to

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the plaintiff. Hence, it was prayed that the present suit be dismissed.

4. No replication was filed.

5. The Ld. trial Court framed the following issues on 04/06/2005.

1. Whether the plaintiff is entitled for the relief of a permanent prohibitory injunction as prayed for? OPP
2. Whether the plaintiff is entitled for relief of a mandatory injunction as prayed for? OPP
3. Whether the plaintiff is estopped to file the present suit by his act and conduct? OPD.
4. Whether the plaintiff has no cause of action or locus standi to file the present suit? OPD.
5. Whether the suit is bad for non-joinder and mis-joinder of necessary parties, and also for the cause of action? OPD.
6. Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPP.
7. Relief.

6. The parties were called upon to produce the evidence, and the plaintiff examined himself (PW-1), Sarwan Singh (PW-2), Gobind Singh (PW-3), Sant Ram (PW-4) and Dei Ram (PW-5). The defendants examined S.S. Chamyal (DW-1), Rajinder

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Singh (DW-2), Devender Sharma (DW-3), Mohan Singh (DW-4), Joginder Singh (DW-5) and S.D. Sharma (DW-6)

7. Learned Trial Court held that Sant Ram (PW-4) demarcated the suit land and found an encroachment of 16 biswa over the suit land made by the defendants by raising a one-storey RCC structure measuring 0-3 biswa and levelling 13 biswa of the land. There was no infirmity in the procedure adopted by him. Field Kanungo also conducted the demarcation of the suit land in which 16 biswas of encroachment was detected. The defendants failed to show any right to encroach upon the suit land. The learned Trial Court answered issues 1, 2 and 6 in the affirmative and issues Nos. 3 to 5 in the negative and decreed the suit of the plaintiff.

8. Being aggrieved by the judgment and decree passed by the learned Trial Court, the defendants filed an appeal, which was decided by the learned Additional District Judge Shimla (learned Appellate Court). The learned Appellate Court concurred with the findings recorded by the learned Trial Court that the demarcation conducted by the local Commissioner proved that the defendants had encroached upon the suit land.

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The local Commissioner had followed the proper procedure while demarcating the suit land. The defendants had failed to establish any right in themselves to encroach upon the suit land. Learned Appellate Court held that public money was spent to raise the construction and demolition of the structure would cause inconvenience to the public and loss to the public exchequer, hence learned Appellate Court set aside the judgment and decree passed by learned Trial Court and ordered the defendants to acquire 16 biswas of land or any part thereof as per their requirement within one year from the date of the decree.

9. Being aggrieved by the judgment and decree passed by the learned Appellate Court, the defendants have filed the present appeal, which was admitted on the following substantial questions of law on 29/09/2008:-

1. Whether the demarcation report submitted by the Local Commissioner, which was not proper, can be made the basis of deciding the case against the defendants?
2. Whether the orders of acquisition can be passed even if the land of the plaintiff has not been demarcated?

10. I have heard Ms Sunita Sharma, learned Senior Advocate assisted by Mr Mohit Sankhyan, learned counsel for

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the appellants and Mr Vinod Gupta, learned counsel, for the respondent.

11. Ms Sunita Sharma, learned Senior Advocate for the appellants, submitted that the learned Courts below erred in holding that the defendants had encroached upon the suit land. Learned Appellate Court erred in issuing the directions to the defendants to acquire the land. Such directions could not have been issued to the defendants, as no one can be forced to purchase the property against their will. Hence, she prayed that the present appeal be allowed and the judgments and decrees passed by the learned Courts below be set aside.

12 Mr Vinod Gupta, learned counsel for the respondent/plaintiff, submitted that the suit land was demarcated twice, first by the Field Kanungo and secondly by the Local Commissioner. Both the demarcating officials had found encroachment of 16 Biswa over the suit land. There is no infirmity in the procedure adopted by the Local Commissioner, and the learned Trial Court had rightly granted the decree of mandatory injunction for demolition of the structure. The Learned Appellate Court had provided an option to the

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defendants to acquire the land to avoid loss to the public exchequer. However, if the defendants do not want to acquire the suit land, the plaintiff is happy with the vacant possession of the suit land. Hence, he prayed that the present appeal be dismissed.

13. I have given a considerable thought to the submissions made at the bar and have gone through the records carefully.

**Substantial question of law No.1.**

14. The process of demarcation was explained by this Court in the ***State of H.P. v. Laxmi Nand, 1992 SCC OnLine HP 41: 1992(2) Sim. L.C. 307,*** wherein the instructions issued by the Financial Commissioner were considered, and it was held: -

> "17. It is the admitted case of the parties that, in so far as the three revenue estates are concerned, the maps prepared during the last settlement were not on the square system. Accordingly, the determining officer was required to relay the boundaries of the fields sought to be demarcated from the Shajra (village map), prepared at the last settlement. He was required to locate three permanent points on three different sides of the area sought to be demarcated. The three points so selected and to be taken as a basis must be those which are admitted to have remained undisputed from the last settlement. The officer is thereafter required to chain these three points on the spot and then compare the result with the distance

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given as per the scale on the Shajra. It is only when the distances so compared agree that the Revenue Officer can proceed with further work of measurement. A pencil line is supposed to be drawn joining these three permanent points and thereafter perpendiculars are supposed to be drawn from these lines to each of the points, which are required to be located on the spot, to enable him to find out the exact distance from these points to the point sought to be demarcated, and then tally the result with the help of the scale on the Shajra, which can be drawn only with the help of the scale on the Shajra, which can be drawn only with the help of a crossed staff. The result is to be finally checked by measuring with the help of a scale on the Shajra. Since this report of demarcation is liable to scrutiny, by way of evidence, it is required that the report of the concerned officer on the face of it must explain the details and the manner as to how he made his measurements, which report must accompany a copy of the relevant portion of the Field Book of current settlement of the village showing KaruKans (dimensions) of the fields of which he took measurements as also a map showing therein the three permanent points, the fields measured and the boundary in dispute. As per the instructions, this is one of the necessary requirements to enable the Court to follow the method adopted and also in order to find out the veracity of the proceedings. The other requirement, while submitting the report, is to record the statements of interested parties before taking the three permanent points to the effect that all of them agreed and accepted the three points as permanent points on three different sides of the property. In case any objection is raised as to the manner in carrying out the demarcation, the said objection is required to be reduced into writing, so as to avoid the possibility of raising any question specifically and also to enable the Court to decide such objections. In case an objection is raised on the spot, the demarcating officer is also required to submit his opinion on such objections. In case, while carrying out the demarcation, any discrepancy is noticed

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> in the area of the fields abutting on the boundary in dispute as recorded in the last settlement and the one arrived at as a result of the actual measurement on the spot, the report is required to incorporate the same with an explanation as to the cause of increase or decrease, if any, discovered on the spot. All these requirements, in our opinion, have been incorporated in the instructions with the ultimate object of ascertaining that while carrying out the demarcation, the correct method was adopted and no mistake was committed."

15. Sant Ram (PW-4) conducted the demarcation in the present case and issued the report (Ext.PW-4/E). This report mentions that the Jarib was checked first, and it was found to be 5 Karam. Three permanent points were required to be taken as per the instructions issued by the Financial Commissioner; however, it was not possible to take three permanent points because the land had been altered from its natural condition. The PWD road was in the vicinity, but it was not a permanent point. Kharsa No. 842 was fixed during the settlement, but it was destroyed during the flood. However, its northern portion existed and was verified with the help of the documents. The corner of Khasra Nos. 840 and 842 was also permanent point, and its correctness was verified by drawing a perpendicular on the spot and on the map. The perpendicular was drawn towards the corner of Kharsa No. 834, and its correctness was verified on

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the spot and on the map. The north-western corner of Khasra No. 842 was also verified, and it was marked as point 'A'. The Northern side of Khasra No. 1336/1287 and the Western side of this Kharsa number were measured, and these were found to be correct. In this manner, the demarcation was carried out, and encroachment of 16 Biswa of land was detected.

16. The report of the demarcation is as per the instructions issued by the Financial Commissioner (Revenue). The demarcating official could not locate three permanent points, but he had located two permanent points, and thereafter the third point was located with the help of these two points. This was the procedure prescribed under the instructions issued by the Financial Commissioner. He had drawn the perpendiculars and verified the correctness of the perpendiculars on the spot and on the map, and in this manner, he had carried out the demarcation. Thus, the demarcating official had followed the prescribed procedure, and the learned Trial Court had rightly accepted the report.

17. Ms Sunita Sharma, learned Senior counsel for the appellants/defendants, submitted that the map (Ext.PW-3/B)

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shows a structure built by the Medical department on three biswas of the suit land, and the learned Courts below had wrongly concluded that the construction was raised by the defendants. This submission is only stated to be rejected. The demarcating official had found that construction was being raised by RCC over the land measuring 3 Biswa, and this fact was depicted in the map (Ext.PW4/C). The map (Ext.PW3/B) also mentions that the construction of the Sub-Centre was being made by the Electricity department on 16 Biswa of the land. Therefore, the map (Ext.PW-3/B) does not disprove the construction being raised by the defendants.

18. S.S. Chamyal (DW-1) admitted that a dispensary has been constructed on the spot towards the other side of the road; therefore, the dispensary is different from the suit land where the construction was being raised. Thus, the existence of the dispensary will not show that no construction was being raised by the defendants.

19. S S Chamyal also admitted that the construction was being raised by the defendants. He admitted that the demarcation was conducted, in which the encroachment of the

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defendants was detected. However, he claimed that the demarcation was not conducted properly because permanent points were not taken. It has already been found out above that three permanent points could not be found, and only two permanent points were taken as per the prescribed procedure. Hence, his statement that the demarcation was not proper cannot be accepted.

20. Therefore, learned Courts below had rightly held that the demarcation was conducted as per the law, and this substantial question of law is answered accordingly.

**Substantial question of law No.2.**

21. Learned Trial Court had passed a decree of mandatory injunction for the demolition of the structure raised on the suit land. However, the learned Appellate Court set aside this decree and ordered the acquisition of the land. It was laid down by this Court in ***Bhagwan Dass vs Jagdish Chand 2000 (1) SLJ 165,*** that in the case of encroachment, possession is the only remedy and no compensation can be awarded. It was held as under: -

> 17. In ***Dip Narain Singh vs. Jagmohan Ahir (AIR 1925 Allahabad 576)***, the plaintiff therein filed a suit for

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possession of the land, alleging that the same, after having been encroached upon by the defendants, a house had been built therein. The learned trial court, while declining the relief of possession, awarded compensation in favour of the plaintiffs. The first appellate court affirmed the findings of the trial court. In the Second Appeal before the High Court, at the instance of the plaintiff, it was held that where immovable property is trespassed upon, monetary compensation is not the proper remedy for the plaintiff. The High Court accordingly granted a decree for possession in favour of the plaintiffs by demolition of the superstructure raised therein by the defendants.

18. Similarly, in *Jiwan* ***Ram and others vs. Hussain Bakhsh and others (AIR 1927 Lahore 534(2))***, it has been held that no court can force a party to part with his property for monetary compensation to his adversary who has taken unlawful possession of it by erecting his building on it.

19. A Division Bench of the High Court of Madras, also in ***Ladooram Sowcar and another vs. Nidamarti Jala Durgaprasadaraydu (AIR 1938 Madras 463)***, has held that the principle that award of damages as a more appropriate remedy instead of an injunction has no application in cases of actual encroachment or trespass by the encroacher on the land of the owner. The appropriate remedy is the delivery of possession to the owner and not the award of damages.

20. The above ratio applies to the facts of the present case on all fours. The defendant has been proved to have encroached upon the land belonging to the plaintiff. He is a trespasser, and there is no equity in his favour. His unauthorised possession cannot be protected simply on the ground that he has raised some superstructure therein.

22. Apart from legal reasons, a jurisprudential reason for not awarding the compensation in case of trespass has been

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provided by ***Ward Farnsworth*** in his ***Legal Analyst: A Toolkit for Thinking about the Law (2007, University of Chicago)*** at page 7*:*

> "Let's look at some other examples. I build a house. Unfortunately, I was mistaken in my measurements, and the structure extends onto your neighbouring property by eighteen inches. There is no cheap way to correct the problem; either the house stays where it is, or much of it will have to be torn down. What to do? The ex-post style of thought accepts the situation as it is and asks how it might best be resolved. Nothing the court says can change the fact that the house encroaches; all we can do now is try to keep the damage caused by the mistake to a minimum. So the natural remedy might be an order that I pay you for the strip of land I built on, perhaps with a little premium since the sale is, in effect, being forced on you. Why waste a perfectly good house by tearing much of it down? But the ex-ante perspective is entirely different. On this view, it matters little how our particular mess gets resolved. The important question is how the resolution of it will affect our behaviour in the future—and the behaviour of others like us. From this standpoint, an award of damages—a forced sale—might seem a terrible solution. It deals sensibly with the problem we already have, but it doesn't give me or anyone else an incentive to be more careful next time. Indeed, it might create the opposite incentive: if I wanted to build on a bit of your property but were unsure whether you would be willing to sell, my best plan would be to go ahead and build and then let you sue for the value of the land. Even if I have to pay a premium, I still might be better off this way than by negotiating with you.
>
> And notice also that the ex-ante point of view is more than just a useful tool for courts to use in deciding cases. It's also important to remember when deciding more broadly how well a rule works. A rule requiring buildings to be torn down when they encroach might look ugly if

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you just study the cases where the rule actually gets used. All you would see are buildings getting torn down or neighbours demanding extortionate prices from each other to avoid that result. But the consequences of the rule don't appear only in those cases, or even primarily in those cases. The results of the rule also include all the cases where the building never encroaches in the first place because everyone was careful to get a proper survey done, for fear that otherwise the house would have to be torn down later. So new houses that don't get torn down are evidence of the rule's operation, too. A rule that looks brutal and wasteful when invoked might actually be working beautifully, if invisibly, by causing the occasions for its use to be rare."

23. He also deliberates on this issue at page 44 as follows:

"Recall the rule that if I mistakenly build a house that encroaches on my neighbour's land, he usually can get an injunction ordering me to remove it; the law won't let me wriggle out of the problem by writing him a check. (He might decide to let me do that, but we'll come back to that possibility later.) Notice that this rule often will violate the single-owner principle; if a single owner of the two properties built a house on one of them that encroached on the other, he would be most unlikely to deal with the problem by tearing the thing down. The law doesn't use the single-owner principle to guide its solution here because it would create bad incentives. When people choose where to build their houses, we don't want them thinking that if they bungle the decision, the law will bail them out by ordering their favoured solution—the solution they would have wanted if they owned all the land in question, which they don't. This amounts to saying that tearing down the house is an inefficient solution to a case of encroachment—or, to be more precise, to an individual case of it. Tearing down

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> offending houses may well be an efficient solution to the problem of encroachment in general; it may be the rule that keeps the total cost of such fiascos lowest by causing them to occur so rarely. This reasoning might make you wonder whether the single-owner solution—letting the encroacher buy his way out of the problem—should at least be available in cases where it seems clear that there was no such abuse because the extent of the encroachment was tiny and the court is sure that it was an honest mistake. Indeed, most courts do make exceptions for those cases.

24. Therefore, there is a force in the submission of Ms Sunita Sharma, learned Senior Counsel for the defendants, that the defendants cannot be forced to purchase the land of the plaintiff by issuing a decree for the acquisition of the land, and the judgment and decree passed by the learned Appellate Court directing the acquisition of the land cannot be sustained. Hence, this substantial question of law is answered accordingly.

**Final Order:**

25. In view of the above, the judgment and decree passed by the Learned Appellate Court are ordered to be set aside, and the judgment and decree passed by the learned Trial Court are ordered to be restored. It would be open for the defendants to recover the cost of construction and demolition

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from the defaulting official as per the law to avoid the loss to the public exchequer.

26. The present appeal is disposed of accordingly, so also the pending application(s), if any.

27. The record of the learned Courts below be returned along with a copy of this judgment.

**(Rakesh Kainthla)**
**Judge**

24th April, 2026
**(ravinder)**