
(2012) 03 SHI CK 0024
In the High Court Of Himachal Pradesh
Case No : LPA No. 169 of 2010

Anjana Mahindroo

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 03-03-2012

Acts Referred:

Citation : (2012) 03 SHI CK 0024

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Advocate : Anuj Nag, for the Appellant; Rajesh Mandhotra, D.A.G., for respondents No. 1 to 3, for the Respondent

Final Decision : Dismissed

Judgement

Justice Deepak Gupta, J.—This appeal by one of the original writ petitioners is directed against the judgment, dated 9.7.2010, passed by a learned Single Judge of this Court, whereby the learned Single Judge rejected the writ petition filed by the writ petitioners. Briefly stated, the facts of the case are that Shri Kundan Lal, predecessor-in-interest of the writ petitioners, applied for and was granted Nautor land measuring 2 bighas, 17 biswas and 14 biswansi in village Sanayardi, Tehsil Sadar, District Mandi in the year 1968 and was allegedly put in possession of the said property in the year 1970. It is not clear as to how this happened but one Sham Lal was also allotted Nautor land measuring 4 bighas, 2 biswas and 15 biswansi. In this 4 bighas of land, the land, which was originally allotted to Kundan Lal, was also included.

2. Kundan lal expired in the year 1975. His widow filed a petition before the Deputy Commissioner, who passed an order for review of the Nautor grant in favour of Sham Lal. The Divisional Commissioner accepted the contention of the widow of late Shri Kundan Lal and recommended that the review be accepted and came to the conclusion that since the land had been granted to Shri Kundan Lal, the predecessor-in-interest of the writ petitioners, it could not have been re-allotted to Sham Lal and, therefore, the order of allotment was bad and liable to

be set aside. Sham Lal filed a revision petition before the Financial Commissioner, which was rejected.

3. The matter did not end here. After losing in the revenue courts, Sham Lal filed a civil suit claiming that even if the allotment in his favour was not proper, he had become owner of the suit land by way of adverse possession. This suit was decreed by the learned trial Court as well as by the learned Appellate Court. The present writ petitioners and their mother filed RSA No. 46 of 1992 which was decided by a learned Single Judge of this Court on 29th October, 1997. The learned Judge held that Sham Lal had become owner of the land as his adverse possession had ripened into his title over the property. It would be pertinent to mention that the learned Judge also held that right from the year 1974 to 1986, the heirs of Shri Kundan Lal had slept over the matter. We also find that before the learned Judge, an argument was raised that the State was a necessary party, but this contention was rejected by the learned Judge on the ground that the plea that the State was a necessary party had been given up before the learned District Judge.

4. After the dismissal of the second appeal on 29th October, 1997, the present writ petitioners filed a CWP No. 1508 of 2002 in the year 2002. This petition was filed five years after the decision of the regular second appeal. This petition was disposed of on 25th February, 2003 with a direction that the Financial Commissioner shall re-hear the matter after giving an opportunity to the petitioners. The Financial Commissioner again rejected the case of the petitioners for grant of Nautor and this led to the filing of a fresh writ petition being CWP No. 719 of 2006. This petition was disposed of by a learned Single Judge of this Court with a direction that the authority concerned should have supplied all the documents to the petitioners before deciding the matter. Thereafter, the documents were supplied and fresh decision was taken which again went against the petitioners. This led to the filing of CWP No. 1036 of 2008. The learned Single Judge rejected this writ petition on the ground that as per the finding of the Civil Court, Sham Lal had taken the possession of the land sometime in the year 1974 and he was declared to be the owner of the said land by way of adverse possession by the Civil Courts and the petitioners and their predecessor-in-interest virtually had not taken any action for a long time and had lost the land because of their own laxity and inaction and hence they cannot ask for alternative piece of land.

5. Here we are dealing with a case where a person is allotted a piece of land and put in possession thereof. He is dispossessed by some other person. He does not go to Court to regain his possession and sits quiet for more than a decade. It is only after the notices were received in mutation proceeding that a petition was sent to the Deputy Commissioner. Thereafter, in the Civil Court, the matter was decided against the present writ petitioners and in favour of Sham Lal. Why should the State be held responsible to give another alternative piece of land when the petitioners have lost their land due to their own laxity or that of their

predecessor-in-interest. Therefore, learned Single Judge was justified in rejecting the writ petition. In view of the above discussion, we find no merit in the appeal which is dismissed accordingly.