
(2010) 10 SHI CK 0113
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 700 of 2008

Baldev Singh

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 28-10-2010

Acts Referred:

Himachal Pradesh Panchayati Raj Act, 1994 — Section 122, 122(1), 122(1)(J)

Citation : (2010) 10 SHI CK 0113

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This petition raises an interesting question of law. The question raised is whether a person who has applied for regularization of encroachment of the land can be deprived of his right to fight an election under the provisions of the Himachal Pradesh Panchayati Raj Act, 1994?

2. At the very outset it would be apposite to make reference to the relevant provisions of the H.P. Panchayati Raj Act. Section 122 of the H.P. Panchayati Raj Act, 1994 sets out various disqualifications for contesting elections to the Panchayati Raj Institutions. Section 122(1)(c) of the said Act reads as under:

122. Disqualifications- (1) A person shall be disqualified for being chosen, as and for being, an office bearer, of a Panchayat-

a) xxxx

(b) xxxx

(bb) xxxx

(c) if or any of his family member(s) has encroached upon any land belonging to or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years

has elapsed since the date on which he or any of his family member, as the case may be, is ejected there from or ceases to be the encroacher; or

xxxx

3. The State of Himachal Pradesh also framed Rules for regularization of encroachments which were known as the Himachal Pradesh Regularization of Encroachments (in Certain Cases) on Government Land and Disposal of Government Land Rules, 2002 (hereinafter referred to as the Rules of 2002).

4. It would be pertinent to mention that after these Rules were notified a number of persons who had encroached upon Government land filed applications for regularization in terms of the aforesaid Rules. These Rules have however been stayed by this Court in CWP No. 1028 of 2002. The State also amended the Panchayati Raj Act and the disqualification aforesaid was introduced with the intention of debarring the encroachers of Government land from contesting elections to the Panchayati Raj institutions.

5. Admittedly, there is no dispute with regard to the fact that the Petitioner is in possession of Government land. The question raised is that the Petitioner could have claimed that he had become owner by way of adverse possession over the Government land but in view of the promise held out by the State to the Petitioner in terms of the Rules aforesaid the Petitioner was induced to make an application for regularization of his encroachment and it is submitted that such application cannot be made the basis for rejecting the candidature of the Petitioner.

6. It would be pertinent to mention that the Petitioner was elected as Member of Zila Parishad from Ward No. 10, Taranda in the elections held in the month of December, 2005. Respondent No. 5 Ramesh Chand challenged the election of the Petitioner mainly on the ground that the Petitioner was in illegal possession of Government land measuring 0-10-99 hectares. Both the authorities below have come to the conclusion that the Petitioner was in possession of the Government land and held the Petitioner disqualified u/s 122(1)(c) of the Act and his election was set-aside.

7. Sh. B.C. Negi, learned Counsel for the Petitioner has candidly admitted that the Petitioner had moved an application for regularization of his encroachment. However, his case is that even as per the averments made in this application the Petitioner had clearly stated that he was in possession of the Government land prior to the settlement which commenced some time on 25.8.1977 and concluded on 14.10.1986. It is, therefore, argued that the Petitioner had become owner by way of adverse possession and could not be termed to be an encroacher of the suit land. It is further argued by him that the State with a view to end litigation had enacted the Regularization of Encroachment Rules and now it would be highly unfair for any party to take advantage of the willingness of one party to negotiate under the said Rules.

8. I am unable to accept the contention of Sh. B.C. Negi. Section 122(1)(c) is a salutary provision. It provides that no person who has encroached upon Government land should be permitted to contest an election to the Panchayat. There can be no dispute with the proposition that persons who hold public or elected offices should be above board. Probity and transparency of public officials is necessary to maintain our democracy. Any effort by the State to ensure that persons who have grabbed public property or persons with criminal background are ineligible to fight elections should be lauded and in such cases a more purposive interpretation should be given so that the purpose behind making the amendment is achieved.

9. A Division Bench of this Court in Kartar Chand v. State of H.P. and Ors. Latest HLJ 2009 (HP) 1187 held as follows:

10. This Court must keep in mind the fact that the disqualification provided for in Section 122(1)(c) is a salutary provision. By means of this provision, persons who have engaged in illegal activity of encroaching upon Government land are debarred from contesting the elections to Panchayati Raj Institutions.

10. A Single Judge of this Court in Swarna Devi v. State of H.P. and Ors. 2009(3) SLJ 1443 has dealt with the matter in detail and held as follows:

13. The intention of Sub-section (c) of Section 122 of the Himachal Pradesh Panchayati Raj Act, 1994 is to deter the persons from encroaching upon the Government land. The same has to be construed strictly to safeguard the property of the State from unscrupulous persons. The provisions like Sub-section (c) of Section 122 of the Himachal Pradesh Panchayati Raj Act, 1994 will definitely deter the person from encroaching upon the Government land fully realizing that they will not be eligible to be elected in any of the Himachal Pradesh Panchayati Raj bodies if they or their relations encroach upon the Government land. The rigours of Section 122(c) of the Act cannot be diluted or supplemented by subsequent notification like dated 4.12.2005.

11. I am in total agreement with what has been stated by the learned Single Judge. Section 122 of the Act lays down various disqualifications and encroachment is also one of such disqualification. A person who has been convicted of any offence involving moral turpitude cannot contest elections for a period of six years from the date of his conviction. A person who has been ordered to give security for good behaviour has been debarred from contesting the elections. A person who grabs property which does not belong to him is an encroacher upon the land.

12. Adverse possession is a piratical right and the Apex Court in Hemaji Waghaji Jat Vs. Bhikhabhai Khengarbai Harijan and Others, had held as follows:

Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is

extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

13. A bare reading of the law laid down by the Apex Court clearly shows that a person who claims to have become owner by way of adverse possession is doing something which is clandestine. He is grabbing property which does not belong to him. Public property belongs to all the people and when one person grabs or takes possession of public property he can legally be debarred from fighting an election. Merely, because 30 years have elapsed and he may have become owner by way of adverse possession does not mean that his wholly illegal action of taking over property which belonged to the people has become legal. It is only the remedy to recover the possession of the land which is lost but the fact is that the true owner has been deprived of the property by the illegal action of such person.

14. It would be pertinent to give an example. In various Institutions especially Cooperative Institutions, persons who are defaulters and owe money to Cooperative Societies are debarred from fighting elections. Even u/s 122 any person who is in arrears of tax imposed by a Panchayat or had not paid the arrears of any kind due from him to the Sabha, Samiti or Zila Parishad Fund or has retained any amount which forms part of the Sabha, Samiti or Zila Parishad Fund is debarred from fighting the election u/s 122(1)(j). Similarly a person who is in arrears of rent of lease or tenancy held under the Panchayat is debarred from fighting elections in terms of Section 122(1)(k).

15. It may be that due to passage of time the Sabha, Samiti or Zila Parishad may not have a right to recover the arrear of tax, dues, rent or lease money because the same has become time barred. However, this cannot mean that the person can fight the election and is not disqualified u/s 122(1)(J) & (k). As pointed out above the remedy is lost but the person continues to be a defaulter. Similarly in the case of encroachment a person continues to be an encroacher even if a long time has elapsed.

16. In the present case, in fact there is no evidence to show that the right of the Petitioner has fructified into ownership. Therefore, I find no merit in the petition which is accordingly dismissed. No costs.