

(1992) 06 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 638 of 1986 and 624 of 1988

Bhajan Dass and Another

APPELLANT

Vs

State of H.P. and Others
 Mangat Ram and Others Vs
Tali Ram and Others

RESPONDENT

Date of Decision : 11-06-1992

Acts Referred:

Himachal Pradesh Nautor Land Rules, 1968 — Rule 10, 11, 12, 13, 14

Citation : (1993) 2 ShimLC 205

Hon'ble Judges : D.P. Sood, J; Bhawani Singh, J

Bench : Division Bench

Advocate : Parneet Gupta and Bhupender Gupta, in C.W.P. No. 638 of 1986 and K.D. Sood, in C.W.P. No. 624 of 1988, for the Appellant; R.K. Sharma, Dy. A.G. for Respondents Nos. 1 to 4 in C.W.P. No. 638 of 1986 and for Respondents Nos. 3 to 6 in C.W.P. No. 624 of 1988 and Parreet Gupta and Bhupender Gupta in C.W.P. No. 624 of 1988, for the Respondent

Judgement

D.P. Sood, J.—This judgment will decide two writ petitions No. 638 of 1986 and 624 of 1988 as both of them arise out of the common facts and common orders passed by the revenue authorities at different stages pertaining to the grant of Nautor Land to both the Petitioners separately and which grants of the Petitioners were challenged on the common grounds by the Estate right-holders (who are the Petitioners in the subsequent writ petition). The earlier writ petition No. 638 of 1986 has been filed by the Petitioners whereas later writ petition No. 624 of 1988 has been directed by the Estate right-holders-objectors. The Petitioners in the earlier writ petition seek the quashing of Annexure P-10 dated 16-1-1984 and Annexure P-15 dated 29-4-1986 passed by the Additional Deputy Commissioner, Shimla, setting aside the grants of nautor land to both the Petitioners and for resumption of nautor land so granted to the government; And subsequently, on appeal the learned Divisional Commissioner accepting the appeal partially and restoring the grant of 3.17 bighas and 7.11 bighas of land to the Petitioners Bhajan Dass and Talli Ram out of the original nautor land so

sanctioned in their favour by the Revenue Assistant, Rohru, vide his order dated 6-8-1974 respectively.

2. In subsequent Civil Writ Petition No. 624 of 1988 the Estate Right-holders seek quashing of orders of Divisional Commissioner dated 29-4-1986 and that of the Financial Commissioner, dated 27-5-1988, affirming the order of the Divisional Commissioner, Annexures P-6 and P-7 respectively. Annexure P-6 corresponds to Annexure P-15 in the earlier writ petition but no corresponding Annexure P-7 has been appended to with the earlier writ petition.

3. To appreciate the rival contentions of the parties in both the writ petitions, the narration of material facts would be absolutely essential.

4. Shri Bhajan Dass and Sh. Talli Ram are brOrs. . Both hail from village Sairi, Tehsil Jubbal, District Shimla. Both applied for the grant of nautor land separately measuring 12.3 bighas and 11.19 bighas respectively from Khasra No. 33/1 for horticultural purpose. The estate right-holders besides forest department raised no objection to the grant so applied for by each one of them. The revenue agency also recommended the case of each applicant for sanction. The share of holding of each applicant was reported to be 7.4 bighas respectively. The grounds mentioned in the application-for eligibility by each one of them was that though the father of the applicants was alive but each one of them was living separately. For supporting this fact, each one of them had annexed affidavit of his father alongwith the application The Revenue Assistant/Sub-Divisional Officer (Civil) Rohru, vide two separate orders dated 6-8-1974, sanctioned the nautor land measuring 12.3 bighas and 11.11 bighas as applied for in Khasra No. 33/1 to both of them, on payment of NAZARANA amounting to Rs. 607.50 and 597.50 respectively apart from fixing the liability to pay annual land revenue and cesses thereupon.

5. The rightholders of villages Sairi, Mandhol and Asthandali through their special attornies, on being apprised of the aforesaid grants, filed an appeal before the Deputy Commissioner, Shimla, after about three years of the grant on 13-7-1977 challenging the aforesaid grants under Rule 28 of the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter referred to as the Rules), on various grounds, inter alia:

(1) that the Petitioners were not residents of village Sairi and thus they were not eligible for the grant of nautor land in the said village;

(2) the grantees were living jointly with their father who was still alive;

(3) that the grants had been obtained by mis-representation and concealment of facts and playing fraud upon various authorities;

(4) that there was a water source and some village paths in the sanctioned land which would effect their grazing and easement rights and it would ultimately cause great inconvenience to them; and

(5) that the Estate Rightholders were not given any opportunity to raise objection.

6. The case was dealt with by the then Additional Deputy Commissioner, Shimla, who accepted the appeal and vide his order dated 28th March, 1978 Annexure-7 restored the grant of nautor land so sanctioned to each one of them and recommended these cases under Rule 12(g) of the Rules to the Government for resumption of land.

7. Both the Petitioners filed separate appeals u/s 28 of the Rules to the then Divisional Commissioner against the orders dated 28-3-1978, Annexure P-7, passed by the Deputy Commissioner, Shimla, who vide his order accepted the appeal and remanded the cases back to the Additional Deputy Commissioner, Shimla, directing him to decide each one of them afresh after affording due opportunity to all the concerned parties under the Rules.

8. Again both these appeals were dealt with by the Additional Deputy Commissioner in the presence of the parties in view of the remand order He, vide his order dated 16-1-1984 Annexure P-10, dismissed the appeals and set aside both the orders dated 6th August 1974 of the Revenue Assistant/S.D.O. (Civil) Rohru, granting nautors in favour of each one of the Petitioners and directed the resumption of the nautor land in each case. The aforesaid orders dated 16-1-1984 passed in each one of the files of the Petitioners was again appealed against under Rule 28 of the Rules (as amended) before the then Divisional Commissioner, Himachal Pradesh at Shimla, in nautor appeals No. 16/84 and 17/84 respectively who vide his order dated 29-4-1986, Annexure P-15, on appraisal of the entire facts and circumstances accepted both the appeals partially and restored the grant of 3.17 bighas of land contained in Khasra Nos. 975/33/1, 975/33/6 and 975/33/7 and 7.11 bighas in Khasra No. 974/33/1, in favour of S/Shri Bhajan Dass and Talli Ram Petitioners respectively on the grounds that the fruit orchard was raised in the lands and a house was found to have been constructed in a portion of the land in Khasra No. 975/33/7 and consequently, according to him, it was not fair and reasonable to cancel the entire grant at such a belated stage. However, the grant of the remaining nautor land which was reported to be either vacant or uncultivable or covered by few fruit trees planted therein, was ordered to be cancelled. It would be pertinent to detail here that report of Tahsildar, Jubbal, dated 26-4-1985, Annexure P-13, was also called for during the pendency of the proceedings by the learned Divisional Commissioner, H.P. at Shimla, whereby it was found that both the Petitioners had also encroached upon the huge area in chak Sairi and Mandhol which belonged to the Government. This fact had also been taken into consideration by the learned Additional Deputy Commissioner, in his order dated 28-3-1978, Annexure P-7, at page 39, indicating that both the Petitioners had enclosed about 60 bighas of land within two parallel walls alongwith the width of the hill and third wall on the southern side in a rectangular shape. Thus the learned Divisional Commissioner, Shimla Division, in his order dated 29-4-1986, referred to above, (Annexure

P-15) also directed that the Tahsildar Jubbal should immediately take steps to eject the Appellants from the encroached land.

9. It appears that some of the right-holders Petitioners in the subsequent Civil Writ Petition aforesaid challenged the propriety and legality of the orders dated 29-4-1986 passed in Nautor Appeal Nos. 16 of 1984 and 17 of 1984 by the learned Addl. Commissioner, Shimla Division, but the Petitioners of C.W.P. No. 638 of 1986 do not appear to have challenged the same further before the learned Financial Commissioner, Himachal Pradesh at Shimla, as no reference thereof has been made in the writ petition.

10. "Nautor Land" under Rule 3 of the Rules means the right to utilize with the sanction of the competent authority, waste land owned by the Government outside the reserved and demarcated protected forests and outside such other areas as may be notified from time to time by the State Government.

11. Rule 5 of the Rules deals with the purpose for which nautor land may be granted. It includes horticulture, besides Ors. . Rule 6 of the Rules deals with the maximum limit of grant. In case of horticulture purpose, the maximum limit to had nautor land can be granted is 20 bighas. Rule 7 deals with the eligibility for nautor land and order of preference in which it should be granted It also specifies that amongst other categories every resident of the estate in which the land applies lies, is eligible in the order of preference given therein, We are concerned with the first category of order of preference detailed in Clause (a) which is as under:

7. Eligibility for nautor land.

...

(a) Such persons who have less than ten bighas of land under self cultivation on 1-1-1974, whether as owners, or tenants, or as lessees, either individually or have an income of less than Rs. 2,000 per annum from all sources including lands. Provided that in this category a dependent of one who has laid down his life for the defence of the country will get preference over his counter-parts;

Rule 8 of the Rules lays down the exception to Rule 7 as:

Where the father is alive, his son or daughter, and where the husband is alive, his wife, shall not be eligible to apply for nautor land except as follows:

Exceptions.-

(a) If a son or a daughter or a wife proved that the father or the husband, as the case may be has disinherited or separated him or her, or has renounced the world, such a son or daughter or wife as the case may be, will be eligible for nautor land; and

(b) If a serving member of the Armed Forces or his son happens to have applied for nautor land in the life time of his father, he will be eligible for nautor land to

the extent of his inheritable share in the father's landed property on the date of the sanction of the nautor land that falls short of the ceiling prescribed under these rules.

We are not concerned with Rule 8A to Rule 11 in the instant case. Rule 12 deals with the circumstances in which the land so sanctioned to the applicant can be resumed. One of the circumstance as detailed in Clause (g) thereof is securing the sanction of nautor by suppression of material facts in his nautor application by the grantee.

12. Rules 13, 14 and 15 lay down the procedure for applications for grant of nautor land. An application for grant of nautor land has to be made in the prescribed form. It has to be in triplicate. It has to be made to the S.D.O (Civil) of the Sub-Division in whose jurisdiction the land applied for is situated. The application has to be accompanied by a Tatima-Shajra (supplementary map) indicating the boundaries of the land applied for. On receipt of the application the concerned S.D.O. (Civil) is required to cause it to be entered in the special register referred to in the Rules. The original application is to be retained by the office of the S.D.O. (Civil) while one of the copies is to be sent to the Girdawar Kanungo and second to the Gram Panchayat of the area and the Forest Officer of the territorial range for their comments. It is the duty of the Girdawar Kanungo to visit the spot and check the Tatima-Shajra and make a special note of the "proximity of any forest, road, path, existing cultivation water channel, a public spring, the slope of the land and record a detailed report in respect of trees standing or lying on the land applied for, if any, with particulars of their kind". He is also to report, amongst Ors. whether the plot applied for is suitable for the purposes for which it is intended to be used, and the extent, nature and validity of the objections, if any Clause (e) of Rule 14 lays down the duty of the Gram Panchayat in the following words:

The Gram Panchayat on receipt of the application shall issue a proclamation calling on any person who may have any objection to the grant of the nautor, to make his objection. A period of one month shall be allowed for receiving objections, if any. After the expiration of the said period of one month the Gram Panchayat shall consider these objections and record its report on the existing rights in the land and the objections to its grant, if any, and return the application to the Tehsil Revenue Officer within 6 months from the date of receipt thereof.

In case the Gram Panchayat fails to make its report and return the application within the stipulated period of 6 months, it shall be presumed that the Gram Panchayat has no comments to offer and the application shall be processed further accordingly.

13. The Forest Range Officer is required to return the application with his comments within 6 months. He is required to give full details of the trees standing or lying on the land and their value. All the reports are to be put up

before the S.D.O. (Civil) within 9 months from the date of the application. Within 3 months of the putting up of the application with the reports, the S.D.O. (Civil) is to decide about the grant of nautor land.

14. Rule 18 lays down the procedure after sanction of the nautor lands, wherein Rule 19 speaks of the circumstances whereunder and when the grantee is bound by the conditions of the Patta. Here we are not concerned with Rules 20, 21 and 22. Rule 23 stands deleted. Rule 24 gives a right to the grantee to be heard before the grant is cancelled and the land resumed. The resumption of possession of nautor is dealt with under Rule 26 which is in the following terms:

26. Resumption of possession. When an order for resuming the grant has been passed by the competent authority, possession of the nautor land shall be taken back by the Tehsil Revenue Officer in accordance with these rules and delivered back to the department to whom it originally belonged.

15. Rule 28 gives a right of appeal to the aggrieved person whereas Rule 29 right of review and Rule 30 provides for revisions.

16. We have carefully examined the provisions of the Rules reproduced above. The nautor rules contain a declaration of principle and policy on which the grant of land owned by the State can be made. Thus it lays down a scheme/detailed procedure which should be followed at the time of grant of nautor to poor or landless persons or such persons who fall within the category of Rule 7. These Rules prescribe a detailed procedure of enquiry at every stage and even provide for appeal, review and revision, they give definition of certain expression used in the Rules and take away an element of arbitrariness in the procedure to be adopted at the time of granting the land as well as at the time of resuming the land. In fact they prescribe a certain norms for proceeding at various stages. The object underlying the Rules is to help poor and helpless residents of Himachal Pradesh.

17. No doubt the narration of the facts clearly show that the factum of challenge given to the order passed by the learned Divisional Commissioner dated 29-4-1986, Annexure P-15, corresponding to Annexure P-6, was made before the Financial Commissioner and the same was affirmed by the latter. This fact came to the knowledge of the Petitioners, Bhajan Dass and Talli Ram on the filing of Civil Writ Petition No. 624 of 1988; Re: Mangat Ram and Ors. v. Tali Ram and Ors. The said Petitioners-applicants have not amended the petition. In that view of the matter, for the purpose of determination of C.W.P. No. 638 of 1986 Re: Bhajan Dass and Ors. v. State of H.P. and Ors., the decision of the Financial Commissioner, dated 27-3-1988 has become final. It has not been challenged in the instant writ petition. On this score alone, C.W.P. No 638 of 1986 is not maintainable and the same is liable to be dismissed which we order accordingly.

18. Regarding the subsequent writ petition of Estate-right-holders, challenging the order of the learned Divisional Commissioner and that of the learned Financial Commissioner, dated 29-4-1986 and 27-3-1988 respectively, no doubt,

both these authorities have granted a portion of the nautor land to either of them holding that both of them owned land in village Sairi and in adjoining village Mandhol and their father had divided his land amongst his sons including both the Petitioners Bhajan Dass and Talli Ram whereafter either of them was living separately from his father and as such they are eligible for the grant of nautor in village Sairi. Regarding other objections that Gram Panchayat never recommended the grants in their cases numbering two and the resolution of Gram Panchayat on the record is false and fabricated and obtained in collusion with Secretary Panchayat, both these authorities held that this matter was not free from doubt and it is difficult to say that Panchayat has or has not recommended their cases for grant of nautor. From the perusal of entire record placed before us, we do not agree with the finding so arrived at by the said authorities. We find sufficient evidence on record which indicates that no such resolution recommending the applications of both these Petitioners Bhajan Dass and Talli Ram had ever been recommended by the Panchayat for the grant of nautor to the Revenue Assistant concerned. In fact the discussions on this point as to whether the grant had been obtained by either of them by suppressing facts in the order dated 28-3-1978 by Sh. P.C. Dogra, Additional Deputy Commissioner and thereafter by his successor read with attenuating circumstances emanating from the other record indicate that no such resolution recommending their cases for the grant of nautor was ever passed by the Gram Panchayat concerned. On the other hand, the statement of Shri Hari Chand Khimta, President of Panchayat stood recorded who categorically stated that applications of the Petitioners Bhajan Dass and Talli Ram were never put in the meeting of the panchayat. Needless to state that the proceedings book of the Panchayat also stood tampered with and said resolution was recorded some time in June 1977 when the right-holders came to know about this grant. However, the instant grants are stated to have been granted to them on 6-8-1974 by the Revenue Assistant, i.e. about three years prior to the passing of the resolution by the Panchayat concerned. Further, we need not to emphasise that as per the report of the Tehsildar, Jubbal, (Annexure P-12), a foot-path in Khasra No. 975/33 that is a portion of the granted nautor land is found to lead to the slate-quarries and the granted land is the portion of the unmeasured pasture land. Also the flow of the water from two sources located in private plots in chak Mandhol has also been found to be through the land in dispute (granted land) Further as per report of the Sub-Divisional Officer C. Rohru, sought for by the learned Divisional Commissioner, both the grantees are found to have covered land measuring 338 bighas in Chak Sairi and Mandhol in addition to the land sanctioned to them and a large portion of land which is rocky and otherwise unfit for agricultural/horticultural purpose. It is a settled law that when a litigant suppresses the material facts and does not come to the Court with clean hands, he is not entitled to any relief. In that view of the matter, in our considered opinion, none of the applicants are entitled to the grant of nautor land in view of the facts and circumstances discussed above. As such the grants so made in their favour are liable to be cancelled and we order accordingly.

19. Before parting with the case, we may clarify that as the Petitioners S/Sh. Bbajan Dass and Talli Ram have constructed a residential house on land measuring about 6/7 biswas, the same, i.e. the land underneath the said building, apart from the land surrounding the house or in front thereof to the same extent, i.e. whatsoever the measurement of the land found underneath the building, be given to the owner/owners whosoever may be found in possession amongst the Petitioners on market value as it exist on the date of this judgment.

20. In view of the above said observations, C.W.P. No. 638 of 1986, Bhajan Dass and Anr. v. State of H.P. and Ors. is ordered to be dismissed. The subsequent C.W.P. No. 624 of 1988, Re: Mangat Ram and Ors. v. Talli Ram and Ors., is allowed.

21. In both the writ petitions, the parties are left to bear their own costs.