
(2015) 03 SHI CK 0016
In the High Court Of Himachal Pradesh
Case No : R.S.A. Nos. 1 and 2 of 2004

Bhangu Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 13-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2015) 03 SHI CK 0016

Hon'ble Judges : Sanjay Karol, J.

Bench : Single Bench

Advocate : Rajiv Jiwan, for the Appellant; R.S. Verma, A.A.G and R.M. Bisht, Dy. A.G., Advocates for the Respondent

Final Decision : Allowed

Judgement

Sanjay Karol, J.—In both these appeals, filed under Section 100 of the Code of Civil Procedure, plaintiff Bhangu Ram (appellant herein) has assailed common judgment dated 06.10.2003, passed by learned District Judge, Bilaspur, H.P., in Civil Appeal No. 64 of 1996, titled as The State of Himachal Pradesh through Collector Versus Shri Bhangu Ram and another and Civil Appeal No. 82 of 1996, titled as Shri Chetan Mohan Versus Shri Bhangu Ram and another.

2. Bhangu Ram was allotted land (2 bighas) by the Deputy Commissioner, Bilaspur vide order dated 24.09.1990. Acting on a private complaint the Deputy Commissioner, Bilaspur, reviewed such order, cancelling the grant on 15.09.1992. Undisputedly, by then Bhangu Ram had occupied the land and put it to his personal use. When authorities tried to take possession, he challenged the order by filing a civil suit. Vide judgment dated 31.05.1996, passed by learned Sub Judge, 1st Class, Bilaspur, H.P. in Case No. 35/1 of 1996/92, titled as Bhangu Ram Versus The State of H.P. and another, plaintiff's suit stands decreed in the following terms:--

"For the reasons recorded hereinabove while discussing above said issues, the

suit of the plaintiff is hereby decreed to the effect that the order passed by Deputy Commissioner Bilaspur dated 15-9-92 in the review application under H.P. Nautor Rule 1908 qua the suit land is hereby set aside being null and void. And further defendants are restrained by way of permanent prohibitory injunction from interfering in the suit land comprised in Khasra No. 80/64/1 measuring 2-0 bighas situated in village Changar Plasani, Pargana and Tehsil Sadar, Distt. Bilaspur H.P. in any manner whatsoever. However, parties shall bear their own costs. Decree sheet be prepared accordingly. File after needful be consigned to record room." 3. In an appeal, preferred by the State (being Civil Appeal No. 64 of 1996) as also by the private respondent (being Civil Appeal No. 82 of 1996), learned District Judge, vide common judgment dated 06.10.2003, passed in Civil Appeals No. 64 and 82 of 1996, set aside the judgment and decree passed by the trial Court and upheld the action of the Deputy Commissioner.

4. Incidentally lower Appellate Court did not deal with the question of power of the Deputy Commissioner to review its own order, as is so mandatorily required under Rule 29 of the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter referred to as the Rules).

5. Thus, present appeals were admitted on the following common substantial questions of law:--

"1. "Whether the Deputy Commissioner could have entertained the petition for review under clause (c) of Rule-29, H.P. Nautor Land Rules, 1968? Courts below wrongly interpreted Chuhniya Devi Vs. Jindu Ram, , which resulted in miscarriage of justice?

2. Whether the successor of the Deputy Commissioner could have reviewed the order of his predecessor without obtaining the sanction of the Commissioner?

3. Whether the land not exceeding 2 Bighas out of a larger area belonging to the State government could have been allotted as Nautor under Rule 27-B of the H.P. Nautor Land Rules, 1968"

6. Mr. Rajiv Jiwan, learned counsel fairly states that question of law No. 3 does not arise for consideration and as such is not pressed.

7. The State of Himachal Pradesh, framed Himachal Pradesh Nautor Rules, 1968, with the object of allotting government land to certain persons specified therein. Rules prescribe proper procedure for processing the application; allotting land and reviewing such action by various authorities so defined therein.

8. Rule 29 of the said Rules reads as under:--

"29. Review - The Financial Commissioner or the Commissioner or the Deputy Commissioner or the Sub-Divisional Officer (C) may either of his own motion or on application of any party interested review, and modify, reverse or confirm any order passed by himself or any of his predecessors in office, provided as

follows:--

- (a) when the Sub-Divisional Officer (C) thinks it necessary to review any order, he shall first obtain the sanction of the Deputy Commissioner;
- (b) when the Commissioner or the Deputy Commissioner think it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Financial Commissioner in the case of the Commissioner and the Commissioner in the case of the Deputy Commissioner;
- (c) the application for review of an order shall not be entertained unless it is made within 90 days from the passing of the order and unless the applicant satisfied the Financial Commissioner or the Commissioner or the Deputy Commissioner or the Sub-Divisional Officer (Civil) as the case may be, that he had sufficient cause for not making the application within that period;
- (d) an order shall not be modified or reversed in review unless reasonable notice has been given to the parties effected thereby to appear and be heard in support of the order;
- (e) an order against which an appeal has been preferred shall not be reviewed."

(emphasis supplied)

9. It has come on record that initial order of grant so made in favour of the appellant, is that of the Deputy Commissioner. Also order of review is by the Deputy Commissioner.

10. Significantly while deciding issue No. 6, trial Court specifically observed that since the Deputy Commissioner, reviewing the order, was not the very same person, who had initially passed the order of grant, hence the subsequent order is illegal for want of prior permission/sanction from the superior authority so prescribed. Thus finding of fact remains undisturbed by the lower Appellate Court.

11. It is a settled principle of law that power of review has to be exercised strictly, in accordance with law. It is not a matter of discretion, for, with the grant of Nautor land, a vested right accrues with the allottee.

12. Thus, action of the respondent/State in reviewing order of grant, dehors the Rules {(Rule 29(b))} is palpably illegal and thus unsustainable in law. In the teeth of existence of Rules, which are mandatory in nature, the Deputy Commissioner, could not have entertained the petition for review, so filed by the private respondent, without first complying them. Appeals are thus allowed. Accordingly, common judgment and decree dated 06.10.2003, passed by learned District Judge, Bilaspur, H.P., in Civil Appeal No. 64 of 1996, titled as The State of Himachal Pradesh through Collector Versus Shri Bhangu Ram and another and Civil Appeal No. 82 of 1996, titled as Shri Chetan Mohan Versus Shri Bhangu Ram and another, is set aside. Questions of law are answered accordingly. Pending application(s), if any, also stand disposed of.