
(2012) 01 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : CWP No. 2750 of 2010

Bhawani Parshad and Others

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 13-01-2012

Acts Referred:

Citation : (2012) 01 SHI CK 0023

Hon'ble Judges : Sanjay Karol, J;Deepak Gupta, J

Bench : Division Bench

Judgement

Deepak Gupta, J.—The petitioners claim to be owners of land measuring 11387.3 bighas comprised in Khata No. 1/1 min, Khasra No. 7/2, Mauza Dhar Drabthou (193), Pargana Trehta, Sub Tehsil Holi, District Chamba, Himachal Pradesh. According to the petitioners, out of the aforesaid land 3306 bighas of land comprised in khasra No. 7/2/1 had been mutated in favour of certain other villagers vide mutation No. 13 dated 14.2.2008. The petitioners have filed the present petition with regard to the remaining 8081 bighas of land comprised in Khata No. 1/1 min, Khasra No. 7/2/2. It is not necessary to give the entire background of the case but according to the petitioners the Raja of Chamba granted the entire land in question on patta to one Dalpat predecessor-in-interest of the petitioners.

2. A civil suit was filed in the year 1963 by Godham, Makholi and Nathu claiming that they were owners in possession of the suit land being successors of Dalpat. This suit was decreed in their favour on 22.4.1965 and the plaintiffs were held to be owners of Kandali Dhar khasra No. 2/1 measuring 8956 bighas as per map Ext.PA/2 which was to be a part of the decree.

3. It appears that thereafter a Commissioner was appointed to demarcate the land and the Commissioner vide his report found that the area of Kandali Dhar as per the map Ext.CW1/B worked out to be 11316.17 bighas. This decree of the Sub Judge was affirmed in appeal by the learned District Judge, Chamba and the High Court dismissed the appeal of the State. Thereafter, mutation in terms of

the Commissioner's order was attested on 16.5.1985. The Union of India of India filed SLP which was dismissed by the Apex Court.

4. In the meantime, Dittu, predecessor-in-interest of Joginder Kumar and some other persons filed civil suit No. 95 of 66 before the learned Senior Sub Judge, Chamba whereby they claimed that the judgment and decree passed in the Civil Suit was obtained by fraud and mis-representation. This suit was dismissed by the learned Senior Sub Judge, Chamba on 10.3.1969. Appeal against such judgment was filed and dismissed on 25.8.1982 on the basis of statement made by Dittu Ram and Sh.Madho Prashad, Advocate for the appellants. Thereafter, Review Petition was filed by Dittu on 29.12.1982 but this Review Petition was also rejected on 19.8.1983. Another application filed for restoration of the appeal dismissed as withdrawn was also dismissed vide order dated 14.4.1992. Thereafter, RSA No. 262 of 1992 was filed in this Court which was dismissed on 2.11.1993. The order of the learned District Judge dated 14.4.1992 whereby application for restoration of appeal was rejected also rejected by this Court vide judgment dated 28.12.1994.

5. Thereafter, one Sh.Joginder Kumar filed a Civil Suit No. 67/06/94 on 4.2.1994 and his contention was that he was born in the year 1978 during the pendency of the appeal vide which judgment dated 10.3.1969 have been challenged. He was never made a party and his interest had not been watched and therefore he claimed that the judgments and decree were not binding on his. This suit was dismissed by the Civil Judge (Senior Division), Dalhousie on 25th September, 2006. Appeal against the said judgment was filed which was disposed of when a compromise was entered into before the permanent Lok Adalat. The State of H.P. was deleted from the array of parties. This order was challenged by the State and set-aside by this Court and the matter was remanded to the learned District Judge, Chamba for decision on merit.

6. In the meantime, the petitioners claiming themselves to be owners of the land applied through their attorney to the Divisional Manager, H.P. Forest Corporation, Working Division, Chamba for demarcation of the Private Forest under Khewat No. 1/1 Min, Khasra No. 7/2/2 measuring 8081 Bighas situated at Mauza Dharbathu Pargna Threta, Sub Tehsil Holi, also known as Kandhlidhar, District Chamba. According to the petitioners the area falls in the ten years felling programme and they have prayed that due to old age a number of trees were uprooted, dried, broken, top broken, diseased and causing hurdle to new generation of the forest. It has, therefore, been prayed that necessary permission for demarcation, felling and conversion etc. for the salvage trees in the forest be accorded.

7. Initially, such application was rejected on the ground that there is a total ban on tree felling but thereafter, this Court in CWP No. 15 of 2010 specifically held that the ban is not applicable in case of fallen or diseased trees and in respect of dried standing timber except in the forests which are covered by the Wild Life Protection Act. Therefore, diseased trees and dried standing timber can be felled

and they can be removed from the forest land. Now, vide the impugned order the application has been rejected mainly on the ground that there is some dispute with regard to the title and that the power of attorney holder, who has filed the application, does not have the right to file the said application in terms of the such power of attorney.

8. There is some dispute between the petitioners and the applicant in CMP No. 6307 of 2010 with regard to the fact as to who is entitled to what share of the forest. Undisputedly, a decree was passed in favour of the predecessor-in-interest of the petitioners, whereby they were declared to be owners of Kandhli Dhar Forest, Khasra No. 2/1 measuring 8956 bighas per map Ex.P.A.2. This map was made part of the decree. Thereafter, during execution proceedings the land, which was mutated in favour of the petitioners/their predecessor-in-interest was 11387-3 bighas. According to the petitioners this was done in accordance with the map since the area was large and unmeasured whereas this fact is disputed by the State Government.

9. During the pendency of the petition, we had passed a detailed order on 13.12.2010, operative portion of which reads as follows:

6. We accordingly pass interim directions partly staying the operation of the impugned order and direct that the uprooted, fallen dried and diseased trees shall be removed from 8081 bighas of Kandhli Dhar forest which we have been informed has already been demarcated vide demarcation report Annexure P-16. Mr. Vivek Thakur submits that the State does not accept the fact that the demarcation report correctly depicts the land of the petitioners. This issue shall also be decided at a later stage. Under law, it is only the Forest Corporation which can remove the said timber from the forest. The Forest Corporation shall ensure that this work is carried out as earliest. The Forest Corporation will keep proper accounts of the timber removed and felled from the forest. It shall also keep accounts of the sale proceeds of the timber and the Divisional Manager, Forest Corporation, Chamba shall submit his affidavit to this Court on or before 30th April, 2011 as to what progress has been done with regard to the felling of such dried fallen and diseased trees. How the proceeds of the income derived from the sale of said timber are to be distributed shall be decided at a later stage.

10. The timber has been sold and now the only question is how the proceeds have to be distributed. The appeal filed by the applicant Joginder Kumar being Civil Appeal No. 14 of 2007/2006 was dismissed by the learned District Judge, Chamba on 15.12.2011. Therefore, the only order which is required to be passed in this writ petition is that the amount deposited by the H.P. Forest Corporation shall be paid to the persons who have been found to be owners of the suit land as per the judgment delivered by the learned District Judge, Chamba on 15.12.2011. The appeal filed by Appellant Joginder Kumar having been dismissed he is not entitled to any amount at this stage. It is made clear that this order shall be subject to any interim directions, if any, which may be passed by the Appellate Court in case any appeal is filed by any aggrieved party against the

judgment of the learned District Judge, Chamba.

11. The writ petition is disposed of in the aforesaid terms so also the pending applications. No costs.