
(2015) 04 SHI CK 0030
In the High Court Of Himachal Pradesh
Case No : C.W.P.I.L. No. 17 of 2014

Court on its Own Motion

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 06-04-2015

Acts Referred:

Citation : (2015) 04 SHI CK 0030

Hon'ble Judges : Sureshwar Thakur, J.;Rajiv Sharma, J.

Bench : Division Bench

Advocate : J.L. Bhardwaj, Amicus Curiae, for the Appellant; Shrawan Dogra, Advocate General, Anup Rattan, Romesh Verma, Additional Advocate Generals and Kush Sharma, Dy. Advocate General, Advocates for the Respondent

Judgement

1. Learned Amicus Curiae has filed his response to the status report filed by the respondents.

2. The issue in the instant petition is regarding encroachment over Government Forest land. It is evident from the status report that there has been rampant encroachments over the forest land. 9612 cases of encroachment over less than 10 bighas of encroached forest land had been registered upto 30.9.2014 and proceedings in 7009 cases had been completed by the Divisional Forest Officers-cum-Collectors under H.P. Public Premises (Eviction and Rent Recovery) Act, 1971 (for short "Act") whereas 2603 cases were stated to have been processed in completion. Out of 7009 cases, encroachment had been removed in 3392 cases by vacating the illegal possession. In addition to above, out of 4069 cases which were under trial with the revenue authorities under Section 163 of the H.P. Land Revenue Act, 1954, 1115 cases have been decided by the revenue authorities, out of which the encroachments have been removed in 771 cases. Besides as many as 2513 FIRs were lodged against the encroachers on Forest/ Government land where an area encroached was found to be more than 10 bighas in terms of the directions issued by one of us (Justice Rajiv Sharma, J) in Cr.M.P. (M) No. 1299 of 2008. All these cases are said to be pending.

3. In Rohru alone, there are 1213 reported cases of encroachment as on 31.1.2015 involving an area of 310-36-99 hectares which have been filed in the Court of DFO-cum-Collector, Rohru. 17 cases pertain to DPF 18(b), DPF 19(a) and DPF 19(b) under the Act. Out of the above encroachment cases, eviction orders have been passed in 661 cases involving an area of 194-77-60 hectares and in 90 cases land measuring 20-93-12 hectares, the encroachers have been evicted and possession has been taken over by the Forest Department. Remaining 642 cases are pending adjudication.

4. At this stage, we may notice that in the affidavit filed in Cr.M.P. (M) No. 1299 of 2008 the respondents themselves had disclosed that as on 30.9.2008, 8828 cases were registered under the provisions of H.P. Public Premises (Eviction and Rent Recovery) Act against the encroachment on forest land before the Collector-cum-DFO and 1024 cases registered under the aforesaid Act which were pending before the Court of Collector or SDM as on 31.12.2008. The Court directed the respondent-State to complete the entire proceedings in all the cases, within a period of six months and if necessary, by constituting special teams, in order to eradicate the nuisance of encroachment on forest/government land. It shall be apt to reproduce the order passed on 13.7.2012 which reads thus:

"The status report has been filed by the respondent-State. According to the status-report, in Kinnaur out of 133 cases, demarcation has been carried out in 132 cases, in Mandi out of 109 cases, demarcation has been carried out in 99 cases, in Chamba out of 74 cases, demarcation has been carried out in 55 cases, in Kullu out of 1003 cases, demarcation has been carried out in 673 cases, in Shimla out of 1071 cases, demarcation has been carried out in 673 cases. In Bilaspur, Kangra, Lahaul and Spiti and Sirmaur, total number of cases is 105 and the demarcation is complete.

According to chart prepared by Mr. Ajay Mohan Goel, amicus curiae, which is taken on record, out of 2495 cases, demarcation has been carried out in 1811 cases.

The respondent-State is directed to carry out the demarcation in all remaining cases within a further period of three months from today. It is made clear by way of abundant precaution that in all the cases, where the demarcation process is complete, challans be put up before the competent courts of law within eight weeks. Status report in this regard be filed immediately after two months.

According to material placed on record, as on 15.8.2008, 15484 cases were registered under the provisions of H.P. Land Revenue Act against encroachment on government land. As on 31.12.2008, 608 cases were detected/registered under the provisions of H.P. Land Revenue Act against encroachment on government land. It is evident from the record that as on 30.9.2008, 8828 cases were registered under the provisions of H.P. Public Premises (Eviction and Rent Recovery) Act against encroachment on forest land before the Collector-cum-DFO. There are 1024 cases registered under the provisions of H.P. Public

Premises (Eviction and Rent Recovery) Act against encroachment on government/ forest land before the Collector and SDM, as on 31.12.2008. Consequently, the respondent-State is directed to complete the entire proceedings in all the cases, mentioned hereinabove, within a period of six months and if necessary, by constituting special teams, in order to eradicate the nuisance of encroachment on forest/government land. The respondent-State shall also file an affidavit stating therein as to how much land of the State by now has been recovered under the provisions of Land Revenue Act and H.P. Public Premises (Eviction and Rent Recovery) Act."

5. The respondents have failed to carry out the directions passed in Cr.M.P. (M) No. 1299 of 2008. In such circumstances, we have no other option but to enlarge the scope of the petition by not confining it to the area of encroachment for which the petitioner has raised grievance, but the directions herein shall henceforth be applicable to the entire State of Himachal Pradesh.

6. Mr. J.L. Bhardwaj, learned Amicus Curiae has painstakingly and by putting great deal of effort filed response to the status report. He has highlighted the following issues:

(i) No seriousness being shown by the authorities to prevent encroachers whereby not only the trees are being cut but have been temporary construction and cultivation has commenced.

(ii) Lodging FIR in itself is not a solution but stern action by imposing exemplary damage has to be resorted to as the encroachers are earning crores of rupees.

(iii) First step for removing encroachment should be by disconnecting the water and electricity connections.

(iv) The area which had been freed from encroachment should be fenced with barbed wire at the expenses of the encroacher and all unauthorized temporary or permanent structures be ordered to be demolished forthwith.

7. We have given anxious and thoughtful consideration to the suggestions made by the learned Amicus Curiae.

8. The very object and purpose of encroaching upon the forest land is only to make a quick buck by illegal means. Therefore, there is no reason why the encroachers should not be made to cough up the extra buck which they have earned over a long period of time.

9. People have long referred to the trees as Earth's lungs as they play a crucial role in our existence, consuming large quantities of carbon dioxide and producing oxygen which enables us to breathe. Apart from providing oxygen, they also cleanse the air and improve its quality, control climate, protect soil and support vast varieties of wildlife. It is universally accepted that deforestation is major contributing factors of climate change and that is why it is so important to protect trees and secure our natural landscapes for future generations.

10. The "sustainable development theory" recognizes and avows "precautionary principle" and "polluter pays principle". The State is having the rights flowing from their position as parents patriae. The forest conservation and eco-management are two inevitable obligations which are to be respected when the theory of "sustainable development" is put into operation. What is required is the insistence for "gun and guard" approach in day-today supervisory functions of the Government.

11. The 1992 Rio Declaration on environment and development has been adopted by India and principle 13 thereof provides:

"The States shall develop national law regarding liability and compensation for the victims of pollution and other environmental damage. States shall also co-operate in an expeditious and more determined manner to develop further international law regarding liability and compensation for adverse effects of environmental damage caused by activities within their jurisdiction or control to areas beyond their jurisdiction." 12. In view of the above declaration, the State is under obligation to safeguard and compensate not only the victims of polluters but also liable to compensate for the adverse effects of an environmental damage. The "Polluters Pays Principle" as interpreted by the Hon"ble Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of "Sustainable development" and as such polluter is liable to pay the cost not only to the individual sufferers but even to the society as a whole, towards the cost of reversing the damaged ecology.

13. The "Polluter Pays Principle" can appropriately be applied to the cases of encroachers because it is the injury caused by each of the occupier/encroacher to the pristine forest wealth and is, therefore, liable compensate for the same. It is more than settled that the forest land cannot be put to for any non-forest purpose but for the facts already set out, it would reveal that there would be environmental degradation in using the forest for non-forest purposes by the occupier/encroacher affecting the environmental equilibrium. This position is apodictic and unassailable. The activities of the occupiers/encroachers in the forest land for the last so many years has had its antagonistic effectiveness in the environmental premise. Therefore, all those responsible for environmental degradation cannot be exculpated.

14. Looking into the nature of the controversy, we are of the view that Irrigation and Public Health as also the Electricity Board are necessary parties to the present petition. Accordingly, I and PH Department through its Engineer-in-Chief, Shimla-2 and HPSEBL through its Executive Director shall stand impleaded as party respondents No. 8 and 9.

15. Having regard to the facts and circumstances of the case and taking holistic view of the matter, we are of the opinion that the following interim directions, at

this stage, would subserve the interest of justice:

(a) Respondents No. 8 and 9 are directed to forthwith disconnect the electricity and water connections provided to all illegal structures raised by way of encroachment over the Government land irrespective of whether these structures are permanent, temporary or are simply tin sheets structures.

(b) It shall henceforth be obligatory for the office bearers of the Panchayats, being public servants, to report all cases of encroachment within their jurisdiction.

(c) In all cases where the encroachments have been removed or yet to be removed, the cost of removal/eviction of such encroachment shall be recovered from the encroacher.

(d) In all cases where the encroachments have been removed or yet to be removed, the vacated land shall be fenced with barbed wire at the cost of the encroacher.

(e) All crops and plants existing over the encroached land shall be destroyed, cut, uprooted etc. at the costs and expenses of the encroacher.

(f) The Forest Guards throughout the State shall henceforth submit a half yearly report to the Head Office through the concerned D.F.O. with respect to the number of encroachments alongwith the details when the same were detected and action taken thereupon.

(g) The respondents shall also initiate recovery proceedings for the undue profit earned by the encroacher by not only cutting down the forest trees but also by utilizing the land by sowing crops and raising orchards. This exercise after computing the value of the trees which have been illicitly cut or removed from the land shall be worked out on the basis of five years average yield.

(h) In all the aforesaid cases where the amount is now recoverable from the encroacher or an ex-encroacher, if not paid within a reasonable time, be recovered as arrears of land revenue under the H.P. Land Revenue Act, 1978.

(i) The amount so recovered/collected from the encroacher, shall be ear-marked by the Government for the expenditure towards compensatory afforestation scheme promulgated by the Government or for other incidental or ancillary purposes as it may deem fit and proper.

16. All the respondents are directed to ensure that all the encroachments over the Government land are got vacated as expeditiously as possible and in no event later than six months. It shall be the personal responsibility of all the DFOs to ensure compliance of the aforesaid directions.

17. The respondent No. 2 is directed to file a fresh status report with regard to the position as on 30.6.2015.

List the case on 6.7.2015.