

(1971) 05 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : C.M.P. No. 25 of 1970

Dhian Singh and Another

APPELLANT

Vs

Collector

RESPONDENT

Date of Decision : 25-05-1971

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : AIR 1972 HP 24

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : H.S. Thakur, for the Appellant; P.N. Nag, for the Respondent

Final Decision : Dismissed

Judgement

D.B. Lal, J.—This is a petition under Article 227 of the Constitution of India whereby an order of the Collector. Mahasu has been challenged, which is to the effect that the disputed land comprised in Khasra No. 397-min, measuring 7 biswas, situate in mauza Tharola. Pargana Chohar. Sub-Tehsil Kotkhair should be sold by auction. The brief facts leading to the petition may now be stated.

2. It is contended that one GOPU was in cultivatory possession of the disputed land and the petitioners Dhian Singh and Amar Sinah are his brothers entitled to succeed him. Upon the death of Gopu certain persons of the village who were interested in his land, made complaints to the Collector that the petitioners were trying to usurp possession over the land and the said Collector, who is Revenue Officer presumably u/s 163 of the Himachal Pradesh Land Revenue Act, 1953 (hereinafter to be referred as the Act), considered that the land has been encroached upon by the petitioners and as such they should be ejected there from and the land be sold by public auction. According to the petitioners, this order of the Collector is without jurisdiction. The petitioners being real brothers of the deceased Gopu, were entitled to succeed and remain in possession over the land. It was therefore prayed that the High Court which has superintendence over all subordinate Courts and Tribunals, should under Article 227 interfere and

quash the order of the Collector which is impugned by this petition.

3. In his counter-affidavit, the Collector contended that the petitioners had unlawfully occupied the disputed land and even started constructing a house over it. The question regarding succession was disputed. The petitioners did not obtain a relief from proper Court as to their title in the land. Therefore, the Collector proceeded u/s 163 of the Act. The petitioners having encroached upon the land could be evicted and since Gopu had died without leaving any heir, the land could be put to auction by the Government.

4. Before advertng to the points of controversy between the parties, it is proper to set out the relevant provisions of law which may be applicable to the facts and circumstances of the case. A perusal of Section 163 of the Act will show that any land belonging to the Government, if encroached upon by a person, can be got evicted from him and a kind of summary procedure is prescribed for it. Clause (2) of Section 163 of the Act is relevant, which is reproduced below:--

"(2). The proceeding of the Revenue Officer under Sub-clause (I) shall be subject to any decree or order which may be subsequently passed by any Court of competent jurisdiction."

5. It is thus abundantly clear that the party aggrieved can file proceeding in a Court of competent jurisdiction and establish his title. The order of the Revenue Officer shall be subject to the decision of such competent Court. There are other provisions in the Act for appeals, review and revisions wherein the order of the Revenue Officer can be set aside. Section 14 of the Act deals with appeals: while Sections 16 and 17 deal with the review and revisions. It would be pertinent to see that in this case the petitioners have not resorted to these provisions of appeals, review or revision.

6. It has been admitted on both sides that GOPU was in cultivatory possession of this land and that he had died. It was stated at the Bar that several complaints were received by the Collector that the petitioners were trying to encroach upon the land and that the petitioners had even started constructing a house. The Revenue Officer made enquiries at the spot. They recorded the statements of witnesses and it was found that the petitioners could not be the heirs of Gopu. In these circumstances, the Collector proceeded u/s 163 of the Act and evicted the petitioners and wanted to dispose of the land by auction. In his return, the Collector has already stated that the question of succession of the petitioners is a disputed one. It is also admitted on behalf of the petitioners that they did not resort to the filing of appeal, review or revision which they could very well do in vindication of their right.

7. The superintendence of High Court under Article 227 is no doubt, both administrative and judicial. However it cannot be stated in the instant case, that the Collector had no jurisdiction to ask for the ejectment of the petitioners. He derived his, jurisdiction u/s 163 of the Act. It is therefore, evident that he acted very much within the domain of his powers. It is also clear that some enquiry

was held and some evidence was recorded. According to the petitioners, such evidence may be insufficient, or anyone or any other Tribunal may have asked for some more evidence before initiating action u/s 163 of the Act. But it cannot be stated that there was no evidence whatsoever on which an inference could be drawn that the petitioners were neither the heirs nor entitled otherwise to remain in possession. The High Court under Article 227 does not relegate itself to a Court of appeal and therefore a minute scrutiny of evidence is not required to be resorted to, nor would it interfere with the discretionary order of the Court. In *Jodhey and Others Vs. State*, the following observation was made with reference to Article 227:

"The High Court may also be moved to act under it when there has been a flagrant abuse of the elementary principles of justice or a manifest error of law patent on the face of the record or an outrageous miscarriage of justice. But the High Court will not be justified in converting itself into a Court of appeal and subverting findings of fact by a minute scrutiny of evidence or interfering with the discretionary orders of Court. Further, this power should not be exercised, if there is some other remedy open to a party. Above all this is a power possessed by the Court and is to be exercised at its discretion and cannot be claimed as a matter of right by any party."

Similarly, the following observation made in *State of Uttar Pradesh Vs. Abdul Aziz and Others*, may also be considered in this connection:--

"The Court's powers of superintendence are exercised primarily through Section 115 of the CPC and Article 226 of the Constitution, and Article 227 confers upon it supplementary power not differing substantially in content but exercisable in cases to which those provisions are not appropriate.

It is not the duty of the High Court in the exercise of its powers of superintendence to correct mere errors of fact or law unless the latter are apparent on the face of the record and there is no adequate alternative remedy. Nor should it so exercise its power of superintendence as to effect an alteration in the judicial system the maintenance of which it should be its object to uphold".

8. In *Nibaran Chandra Bag etc. Vs. Mahendra Nath Ghughu*, a similar view was taken when it was observed that under Article 227 the powers to be exercised are not appellate in nature for correcting errors in the decisions of subordinate Courts or Tribunals. It is merely a power of superintendence to be used to keep them within the bounds of their authority. If the findings recorded were based on no material, or were otherwise perverse, or the Revenue Officer in this case could be stated to have out stepped the limits of his jurisdiction, the High Court could exercise its power under Article 227. Such is not the situation in the present case and hence no interference is called for. It is a disputed question of fact, as to whether the petitioners are the heirs of Gopu and this question cannot be decided in a proceeding under Article 227. This is also emphasised in *Union of India and Another Vs. Authority under the Minimum Wages Act, 1948 for Neral*

Area and Civil Judge Junior Division Karjat and Others, under the Minimum Wages Act, 1948 for Neral Area and Civil Judge Junior Division Kariat). It is, therefore, abundantly clear that Article 227 is not attracted and the extraordinary remedy is not sustainable.

9. As stated before, the petitioners could have filed appeal, review or revision under the Act. Section 163 of the Act is itself subject to a decision of title by a Court of competent jurisdiction. The petitioners never availed of these remedies. They can even file a civil suit for declaration of their title. Where alternative remedies are available. Article 227 will not help the petitioner. In AIR 1962 Puni 441 (Bhola Hardial v. Kurra Ram), it was held that Article 227 would not apply where redress could be granted by filing a revision.

10. In this view of the matter the petition is obviously without any force and must be rejected.

11. The petition is dismissed. However, no order is made as to costs.