

(2001) 10 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 13 of 1981

Guridal Rana and Another

APPELLANT

Vs

Rajinder Singh Sood and Others

RESPONDENT

Date of Decision : 12-10-2001

Acts Referred:

Constitution of India, 1950 — Article 162
Himachal Pradesh Nautor Land Rules, 1968 — Rule 14

Citation : (2002) 1 ShimLC 197

Hon'ble Judges : Kamlesh Sharma, J

Bench : Single Bench

Advocate : S.S. Mittal, for the Appellant; K.D. Sood, Sunita Sharma, Advs.for the respondent 1(a) and 1(b) and K.D. Batish, A.A.G.for Respondants 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

Kamlesh Sharma, J.—This regular second appeal is directed against the decree and judgment dated 11.12.1980 passed by the Additional District Judge, Mandi, Kullu and Lahaul Spiti Districts at Mandi, HP, whereby the appeal of Defendant Maya Devi was allowed and the decree and judgment dated 20.9.1978 of the sub-Judge 1st Class, Kullu, was set aside and the suit of the plaintiffs was dismissed. The Sub-Judge 1st Class had decreed the suit of the plaintiffs.

2. The facts in brief are that Amin Chand and Tulsi Ram were the plaintiffs who had filed the suit in their personal as well as representative capacity on behalf of eight other right holders of village Mohal, Kothi Khokhan, Tehsil and District Kullu for declaration that the grant of Nautor land measuring 5-2 big has, situated in Phati Mohal, Tehsil and District Kullu (hereinafter called "the suit land") in favour of Defendant Maya Devi vide Patta No. 1496/DC dated 13.7.1972, is illegal and also for permanent prohibitory injunction restraining her from interfering in the suit land. The original plaintiff Amin Chand had died before the trial Court and his legal representative Smt. Tara Devi was brought on record,

who alongwith Tulsi Ram had filed the present appeal, but both of them have also died in the meantime and their legal representatives are brought on record to continue with the present appeal. Defendant Maya Devi has also died during the pendency of the present appeal and her legal representatives are impleaded as party Respondants. The Secretary (Home) to the Government of Himachal Pradesh and the Collector, Kullu (Respondants 2 and 3) are also the Defendants.

3. The case set up by the plaintiffs is that the suit land could not be granted as Nautor to Maya Devi as it is a grazing ground and also the resting place of their cattle. According to them, the rights of the villagers over the suit land granted to Maya Devi as Nautor, have been materially affected. They have also alleged that once in 1965 one Mast Ram had also applied for the grant of suit land as Nautor and his application was rejected on the objections of the right holders, but the grant of suit land as Nautor to Maya Devi was made clandestinely without any notice to them.

4. The Secretary (Home) to the Government of Himachal Pradesh and the Collector, Kullu filed joint written statement. Para two of their written statement is material and it is reproduced here in below:

2. In reply to para No. : 1-A, it is correct that the nautor case No. : 1496/DC, was sanctioned in favour of Defendant No. 3 on 13.7.1972. All the three field investigating agencies have inquired into the case properly except that the village Panchayat has not given the notice properly, as in the notice the said Panchayat has asked the "bartandars" to file objections within the period of 15 days instead of one month required under the rules. Regarding the contention of the plaintiff that the Nautor area sanctioned in this case is a grazing ground situated in Bihal is admitted.

5. Defendant Maya Devi also filed the written statement and resisted the suit. According to her, she was eligible for the grant of Nautor and it was rightly made in her favour by following the procedure laid down under the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter called "the Nautor Rules").

6. On the pleadings of the parties, the following issues were framed:

1. Whether the rights of the user of the plaintiffs have been materially affected by the grant of patta of Nautor dated 13.7.1972 If so, its effect? OPP.

2. Whether the area in dispute falls in Bihal? OPP.

3. Whether the consent of the right holders were not taken for the grant of Patta Nautor? OPP.

4. Whether the Defendant made improvements .in the suit .land? If so, how much value and when it was made? OPD.

5. Whether for the grant of Nautor proper procedure was not fol-lowed? If so, its effect? OPD.

6. Relief.

7. Issues 1 to 3 and 5 were decided in favour of the plaintiffs and issue No. 4 in favour of Defendants and the suit was decreed for declaration that the grant of suit land as Nautor in favour of Maya Devi was illegal and void and she was restrained from interfering in the rights of the plaintiffs over it.

8. In the appeal filed by Defendant Maya Devi, the findings of the Sub-Judge 1st Class, were set aside by the Additional District Judge holding that notice of 15 days instead of 30 days by the Panchayat as provided under the Nautor Rules did not make the grant of Nautor void in the absence of any provision in the Nautor Rules that what would be the consequence of not giving the notice of 30 days by the Panchayat. Though on the basis of oral and documentary evidence on record; more specifically the Wazibularz Ext. PA, it was held-that the plaintiffs have customary easementary "rights of pasture over the suit land, yet the suit land could be granted as Nautor, as the plaintiffs have failed to prove that ifese rights were materially affected to prohibit the grant of suit land as Nautor.

9. Feeling aggrieved, the Defendants had filed the regular second appeal befor e this Court which was dismissed on 22.3.1990 by the then Hon"ble the Chief Justice of this Court holding that finding of fact arrived at by the Additional District Judge that the rights of the plaintiffs are not affected by the impugned grant, is a finding of fact and it does not call for any interference in the regular second appeal.

10. The Defendants had filed the SLP in the Supreme Court against the decree and judgment of, this Court which was allowed and Civil Appeal No. 5206 of 1990 was registered. The Supreme Court by its order dated 22.8.2000 has allowed the appeal and set aside the decree and judgment dated 22.3.1990 of this Court and remanded the case for deciding the question regarding validity of the lease vis-a-vis Rule 14(e) of the H.P. Nautor Land Rules, 1968. The operative portion of the order dated 22.8.2000 is as under:

One of the arguments raised by the learned Counsel for the ap- . pellants is that the question regarding validity of lease vis-a-vis Rule 14(e) of the Rules, has not been considered by the High Court and, therefore e, the case may be sent back to High Court to decide the said question. We have perused the judgment and find that the validity of lease on touchstone of Rule 14(e) has not been considered by the High Court. For the afor esaid reason, the judgment of the High Court is set aside and the case is sent back to the High Court to decide the appeal in the light of observation made hereinbefor e.

11. After the remand, memo, of parties was corrected as per memo of parties befor e the Supreme Court, as in the meanwhile Appellant Tara Devi and respondent Maya Devi had died and their legal representatives were brought on record and notices were sent to the parties except Respondants 2 and 3 who are represented by the Additional Advocate General. After service of the parties when the matter was taken up for hearing, an application (CMP No. 376 of 2001)

was filed on behalf of the Appellants-Defendants that they may be permitted to place on record two sale deeds executed by Rama Devi daughter of Maya Devi, whereby she has sold whole of her land in Phati Mohal Kothi Kokhan, Tehsil and District Kullu as a result of which she has become ineligible either for allotment of Nautor land or even for purchase of agriculture* land in Himachal Pradesh, as per the provisions of the H.P. Tenancy and Land Reforms Act, 1972.

12. In reply to the application on behalf of respondent Rama Devi, she has not denied the sale of her land by way of sale deeds dated 3.2.1997 and 4.3.1997, but according to her she still has share in the house and land and she continues to be the resident of Mohal. It is also alleged by her that the additional facts pointed out in the application cannot be taken note of in this appeal without seeking amendment of the plaint and placing this fact on record by way of additional evidence.

13. This Court has heard the learned Counsel for the parties and gone through the record.

14. In view of the directions of the Supreme Court; the controversy is narrowed down and the only point for the decision of this Court is as under:

What is the effect of non-compliance of Rule 14(e) of the Rules on the grant of the suit land as Nautor to Maya Devi? Rule 14(e) is as under:

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.

15. The argument of learned Counsel for the plaintiffs is that the provision of issuing proclamation inviting objections and allowing the period of one month for receiving objections is mandatory and violation of it would vitiate the grant of Nautor. On the other hand, learned Counsel for the Defendants has urged that issuing of proclamation inviting the objections may be mandatory, but the period of one month for receiving the objections is only directory. According to the learned Counsel, allowing of 15 days time for receiving the objections by the Panchayat in the case in hand does not vitiate the grant of Nautor as there is substantial compliance of Rule 14(e) of the Nautor Rules.

16. Before considering the respective contentions of the learned Counsel for the

parties, this Court may refer to a Division Bench judgment of this Court in Percy Chauhan v. State and Anr. ILR (1979) HP 35, wherein it has been held that the Nautor lands belong to the State, therefore, it is for the State Government to formulate principles on which the grant of such land can be made. The Nautor Rules incorporate these principles and these are issued under the executive power of the State exercised under Article 162 of the Constitution. It is further held by the learned Judges that these Rules possess force of law and the authorities administering these rules cannot contravene them and if their contravention results in any injury of substantial nature, this Court can redress the wrong.

17. Some of the points decided by the Division Bench of this Court in Percy Chauhan's (supra), were examined by the Full Bench of this Court and the findings thereon were altered in Mangheru v. The State of Himachal Pradesh and Ors. 1981 Shim. L.C. 431, but the findings in respect of the nature of the Nautor Rules as stated hereinabove remained intact as these were not in issue before the Full Bench.

18. In order to answer whether the period of 30 days for receiving objections as provided under Rule 14(e) is mandatory or directory, the intention of the Rule Making Authorities in providing the period of 30 days is to be found out. So far the language of the Rule is concerned, the use of word "shall" does not suggest it to be mandatory. Had some imperative word, such as, "must" been used in place of word "shall" or had the provision been couched in prohibitive or negative language or the consequence of not giving the notice of 30 days or for giving the notice of lesser period been provided, there would have not been any hesitation in holding the period of one month for receiving objections as mandatory. (See: K. Narasimhiah Vs. H.C. Singri Gowda, and Lachmi Narain and Others Vs. Union of India (UOI) and Others,

19. Even if the period of one month for receiving the objections is directory, its substantial compliance is required and if it is proved that its non-compliance has resulted into some prejudice to a party by defeating its right to file objections, the consequence thereof might be vitiating the grant of Nautor land. As per the procedure prescribed in the Nautor Rules, the application for grant of Nautor land is considered by various agencies, who after making necessary inquiry, send report whether the plot of land applied for is suitable for the grant or not. So far the agency of the Panchayat is concerned, it has to send its report on the existing rights in the land and the objections- to its grant, if any for which it is required to issue a proclamation inviting the objections from right holders of the revenue estate. The purpose behind prescribing the period of 30 days for inviting the objections is clear, it is to give reasonable time to the right holders of a revenue estate to file objections, if any. The Rule Making Authorities thought 30 days period as reasonable for the reason that the number of the right holders of the estate may be large and some of them may have gone out in connection with their business, service or domestic affairs or otherwise they may not get time to

prepare their objections and file the same for some reason. therefore e, normally 30 days notice should be given but if in exceptional circumstances notice for lesser period is given, those exceptional circumstances should be made out from the records of the Panchayat. Fixing lesser period of notice should not be left to the whims and fancy of the Panchayat.

20. So far the case in hand is concerned, it is proved on record that the Gram Panchayat had given notice of 15 days for inviting objections and the case of the Defendants has been that it was not brought to their notice and the recommendations of the Gram Panchayat were sent clandestinely on the basis of which Nautor was granted to Maya Devi. According to the Defendants, had notice of 30 days been given, it might have come to their notice and they would have filed the objections. It is also not on record that why the Gram Panchayat gave notice of 15 days instead of 30 days as prescribed-under the rules. therefore e, this Court finds that non-compliance of the provision of 30 days notice inviting objections has resulted into serious prejudice to the plaintiffs depriving them of the opportunity to file objections to the effect that they have customary easementary rights of grazing cattle over the land which was allotted to Maya Devi as Nautor. Had 30 days notice been given, there was every possibility of the plaintiffs acquiring knowledge of the notice and filing objections. Had the Panchayat considered the objections, it would not have recommended grant of Nautor in favour of Maya Devi. In this view of the matter, without giving reasonable opportunity to the right holders to file their objections, the recommendations of the Panchayat could not be acted upon and without the recommendation's of the Panchayat, the grant of Nautor will be in violation of the procedure prescribed under Rule 14, more specifically Rule 14(e). It is well settled that if an action is prescribed in law to be done in a particular manner, it must be done in the same manner, otherwise that action cannot stand judicial scrutiny. Applying this principle, the grant of Nautor in favour of Maya Devi without valid recommendations of Panchayat cannot be upheld.

21. It has also come on record that during the pendency of the Civil Suit. In view of the objections of the right holders, the Gram Panchayat vide its resolution No. 22 dated 22.2.1974 unanimously resolved to cancel the grant of Nautor to Maya Devi. The objections of the right holders were also found correct by the trial court when the Sub-Judge had visited the spot on 18.9.1978. His inspection note is as under:

I have inspected the spot in this case today in the presence of the parties and their counsel. The land in dispute is just on the right side of the main Kulu-Bhuntar road. There is one double sto-reyed house constructed by the Defendant on this land. The land is still lying unreclaimed. There is a path through the centre of the land said land. There is also play ground and a net of the volley-ball was found tied with the poles. There were some cattle grazing in the said land. The land is surrounded by the houses on one side and by land of other inhabitants on the remaining sides. Except the said construction, nothing has

been done by the Defendant on the said land.

Sd/- Sub Judge 1st Class, Kullu, 18.9.1978.

22. Now by way of their application, the plaintiffs have brought the factum of sale of whole of the land inherited by the Defendants from Smt. Maya Devi in estate Phati Mohal Kothi Kokhan, Tehsil and District Kullu, which has not been categorically denied by the Defendants. Irrespective of the technicalities that the subsequent event of sale should be brought on record by way of amendment of the plaint or by way of additional evidence, one thing is clear that the purpose of grant of Nautor land to Maya Devi has been defeated and it must revert to the Government so that it may be put to best use and the right holders may also enjoy their rights over it.

23. The result of above discussion is that the appeal is allowed and the decree and judgment dated 11.12.1980 passed by the Additional District Judge, Mandi, Kullu and Lahaul Spiti Districts at Mandi, is set aside and the suit of the plaintiff is decreed for declaration that the grant of Nautor land measuring 5-2 big has, situated in Phati Mohal, Tehsil and District Kullu in favour of Maya Devi was illegal. However, the Defendants may not be dispossessed from that portion of the suit land over which Smt. Maya Devi had made construction and which continues to be in their possession. The Government may regularise the possession of Defendants. No costs.

CMP No. 376 of 2001

24. In view of the judgment passed in the appeal, no order is required to be passed in this application and it is accordingly disposed of.