

(2015) 04 SHI CK 0118
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 6355 of 2014

Hari Nand

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2015) 2 ShimLC 808

Hon'ble Judges : Piar Singh Rana, J.

Bench : Single Bench

Advocate : O.P. Sharma, Senior Advocate and N.K. Dass, Advocate, for the Appellant; M.L. Chauhan, Additional Advocate General, for the Respondent

Judgement

Piar Singh Rana, J.—Order Present civil writ petition is filed under Article 226 of the Constitution of India pleaded therein that petitioner is owner in possession of land comprised in field No. 771/1 and 77/2 measuring 9 biswas situated in mauja Thund Pargana Kaunili Kalan Tehsil and District Shimla in which old house of petitioner is situated. It is pleaded that land was granted to petitioner on dated 14.8.1986. It is further pleaded that all four brothers have relinquished their share in favour of petitioner and petitioner is residing in the house for the last more than forty years after the death of his father late Shri Ishwar Dass. It is pleaded that petitioner is a retired employee for more than three years. It is pleaded that petitioner filed an application for attestation of mutation before A.C. 2nd Grade but non-petitioner No. 3 refused to attest the mutation on the ground that area falls under territorial jurisdiction of another revenue officer. It is pleaded that non-petitioners are duty bound to attest the mutation in accordance with law. It is further pleaded that field revenue agency did not comply the directions of Deputy Commissioner. Prayer for acceptance of civil writ petition sought. Per contra reply filed on behalf of non-petitioners pleaded therein that petitioner has no cause of action and petitioner has no locus standi to file the present writ petition. It is pleaded that petitioner is estopped from filing present petition due to his own act and conduct. It is pleaded that petitioner has not

approached the Court within stipulated period. It is also pleaded that ownership of land comprised in Khasra No. 77/2 measuring 6 biswas situated in mauja Thund Pargana Kaunili Kalan Tehsil and District Shimla H.P. was granted in favour of petitioner and thereafter file was sent to concerned authority for further action with regard to grant of ownership right of field No. 77/2 measuring 0-6 biswas on market price. It is pleaded that petitioner had filed the application for attestation of mutation after a period of twenty eight years. It is pleaded that petitioner did not produce the order for attestation of mutation in revenue record. It is pleaded that petitioner has no cause of action to file civil writ petition. Prayer for dismissal of petition sought.

2. Court heard learned Advocate appearing on behalf of the petitioner and learned Additional Advocate General appearing on behalf of the non-petitioners and Court also perused the entire record carefully.

3. Following points arise for determination in this civil writ petition:--

"1. Whether petition filed by petitioner is liable to be accepted as mentioned in memorandum of grounds of petition?

2. Final Order."

Findings on point No. 1

4. Submission of learned Advocate appearing for the petitioner that revenue staff was under legal obligation to comply with the order of Collector Shimla Sub Division Shimla (Rural) announced in case No. 20-VIII/85-86 decided on dated 14.8.1986 is accepted for the reasons hereinafter mentioned. Court has carefully perused the order passed by Collector Shimla Sub Division Shimla (Rural) (H.P.) dated 14.8.1986. Collector Shimla Sub Division Shimla (Rural) has specifically directed that field No. 77/1 measuring 3 biswas could not be given to petitioner because petitioner is encroacher and learned Collector Shimla Sub Division Shimla (Rural) ordered that petitioner be ejected from land comprised in field No. 77/1 measuring 3 biswas. It is also proved on record that learned Collector further directed that in field No. 77/2 measuring 6 biswas there is an old house of petitioner and same could not be demolished. Learned Collector further directed that petitioner would be granted the land on market price which comes to Rs. 150/-. Thereafter learned Collector sent the file to revenue agency for further action with regard to grant of ownership right in field No. 77/2 measuring 0.6 biswas on market price. It is proved on record that market price was deposited by petitioner. It is also proved on record that thereafter copy of order of learned Collector Shimla Sub Division Shimla (Rural) H.P. announced in case No. 20-VIII/85/86 dated 14.8.1986 was sent to Tehsildar Shimla vide No. 4568 dated 16.8.1986 for compliance. It is also proved on record that order passed by Collector in case No. 20-VIII/85/86 dated 14.8.1986 titled Hari Nand and others v. State of H.P. had attained the stage of finality. There is no oral or documentary evidence on record in order to prove that order passed by Collector Shimla Sub Division Shimla (Rural) H.P. in case No. 20-VIII/86/96 decided on dated

14.8.1986 was set aside or modified by any competent authority of law. It is held that nothing was to be done on the part of petitioner. Age of petitioner is more than 61 years and petitioner is retired personnel. Court is of the view that non-petitioners are under legal obligation to grant ownership right in favour of petitioner qua Khasra No. 77/2 measuring 6 biswas situated in mauja Thund Pargana Kaunili Kalan Tehsil and District Shimla. H.P. in view of the order of Collector Shimla Sub Division Shimla (Rural) which attained the stage of finality. It is also proved on record that copy of order of Collector Shimla Sub Division Shimla (Rural) announced in case No. 20-VIII/85-86 dated 14.8.1986 along with file of A.C. 2nd Grade Shimla was sent to Tehsildar Shimla vide 4568 dated 16.8.1986 and there is no evidence on record that what compliance steps were taken by Tehsildar after receipt of case file No. 20-VIII/85-86. Point No. 1 is answered in affirmative.

Point No. 2 (Final Order)

In view of findings in point No. 1 petition is allowed and it is ordered that non-petitioners would grant ownership rights in favour of petitioner qua Khasra No. 77/2 measuring 0-6 biswas and would also attest the mutation in favour of petitioner qua Khasra No. 77/2 measuring 6 biswas within one month from today. Petition stands disposed of. All pending miscellaneous application(s) if any also stands disposed of.