
(2013) 11 SHI CK 0039

In the High Court Of Himachal Pradesh

Case No : CWP No. 8662 of 2013 and CMP No. 18888 of 2013

Himachal Pradesh Crick

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 05-11-2013

Acts Referred:

Citation : (2013) 11 SHI CK 0039

Hon'ble Judges : A.M. Khanwilkar, C.J;Kuldip Singh, J

Bench : Division Bench

Advocate : P.S. Patwalia and Mr. R.K. Bawa, s, Abhinav Mukherji, Parshotam Chowdhry, Vikrant Thakur and Jeevesh Sharma, for the Appellant; R.S. Cheema , Jasdev Singh Mehndiratta and Arshdeep Singh Cheema, Advocates, for respondents No. 1 and 3 to 10 and Mr. Shrawan Dogra, Advocate General, Mr. Anup Rattan, Romesh Verma, Additional Advocate Generals, Mr. J.K. Verma and Ms. Parul Negi, D.A.G.s, for the Respondent

Judgement

1. We have heard counsel for the parties on the question of grant of interim relief in this petition. This petition first appeared on 31st October, 2013, when it was adjourned at the instance of the respondents-State, as the State wanted to engage special counsel. No reply-affidavit has been filed by the respondents-State. We are conscious of the fact that we are called upon to consider question of grant of interim relief, which will be mandatory in nature. We are deciding the said question on the basis of indisputable facts.

2. The moot question that needs to be answered for considering grant of interim relief as prayed is - whether the State has acted with or without authority of law in directing taking over forcible possession of petitioners from the land in question, and in particular, the building constructed on the said land, which, according to the petitioners, belong to the petitioners. There is nothing to indicate that the said building was constructed with the contribution from the State as such.

3. The factual background in which possession of the building has been taken

overnight on 26th October, 2013, emanates from the proceedings initiated by the Registrar of Cooperative Societies. After issuance of show cause notice by him, the petitioners had rushed to this Court when the Court disposed of the said CWP No. 7593 of 2013-I, on 19th September, 2013, by relegating the petitioners to agitate the grievance about the issue of jurisdiction of the Registrar of Societies before the same Authority. The Court also directed the Registrar of Societies to decide the said issue in the first place and not to act upon that decision for a period of ten days to enable the petitioners to take recourse to appropriate remedy to challenge the same.

4. It is not in dispute that the Registrar decided the said issue on 28th October, 2013. However, before the said decision could be pronounced, the State Government, on 26th October, 2013, in particular, the Revenue Department, set the proposal for cancellation of leases granted to the Himachal Pradesh Cricket Association Society in motion, as a result of which the matter was examined by the Cabinet of the Government of Himachal Pradesh the same day. It is stated that the Cabinet unusually took decision at around 10.30 p.m. on 26th October, 2013 itself. Obviously, as a consequence of that decision, the Principal Secretary (Revenue) to the Government of Himachal Pradesh issued the impugned order, dated 26th October, 2013, terminating all the leases/sub-leases of Government lands granted in favour of the Himachal Pradesh Cricket Association, referred to in paragraphs 1 and 2 of the impugned order. The Principal Secretary (Revenue) to the Government of Himachal Pradesh further directed the concerned Authorities, to which the order was addressed, to take immediate possession of the leased lands free from all encumbrances. It is stated that after receipt of the said communication, obviously at around midnight, the Deputy Commissioner, Kangra at Dharamshala, issued order, dated 26th October, 2013, which reads thus:

OFFICE OF THE DEPUTY COMMISSIONER KANGRA AT DHARAMSHALA

No. 202-206/PADC/L&B Dated, Dharamshala the 26th October, 2013

To

1. The Superintendent of Police, Kangra at Dharamshala
2. Himachal Pradesh Cricket Association, Dharamshala
3. District Youth Services & Sports Officer, Kangra at Dharamshala.
4. Tehsildar, Dharamshala
5. The Sub Divisional Magistrate, Dharamshala.

Subject Termination of leases of Government lands granted in favour the Himachal Pradesh Cricket Association.

Sir,

With reference to Principal Secretary (Revenue) to the Government of Himachal

Pradesh letter No. Rev. D. (E)3-53/2009 dated 26th October, 2013, it has been decided to terminate all the leases or sub leases of government land granted in favour of Himachal Pradesh Cricket Association mentioned in Para I & II of the order in district Kangra.

In view of above decision, I direct District Youth Services & Sports Officer, Kangra at Dharamshala to take over the possession of the properties of HPCA on leased land free from all encumbrances.

I further direct Tehsildar, Dharamshala to terminate the leases of the said land as mentioned in the order immediately.

The Director Youth Services & Sports Officer is further directed to keep the properties under his control and possession till further orders and prepare necessary inventories of the articles.

The Superintendent of Police, Kangra at Dharamshala to prove necessary police assistance during the process of taking over the possession of the properties and make further security arrangements.

The Sub Divisional Magistrate, Dharamshala is deputed as duty magistrate for law and order till further order.

Yours faithfully,

Sd/- Deputy Commissioner, Kangra at Dharamshala

Endst. No. ---/Dated, Dharamshala the --- th October, 2013

A copy is forwarded to Principal Secretary (Revenue) to the government of Himachal Pradesh Shimla w.r.t. his office letter No. Rev. D(E)-53/2009 dated 26th October, 2013 for information please.

Deputy Commissioner, Kangra at Dharamshala

In the present order, we are considering the correctness and appropriateness of only this order and no more.

5. We are in agreement with the submission of the petitioners that by an executive fiat, the person in settled possession cannot be dispossessed, even though, such person can be stated to be a trespasser. This position is no more *res integra*.

6. The Apex Court in the case of Bishan Das and Others Vs. The State of Punjab and Others, had occasion to deal with similar controversy and deprecated the approach of the State to take over forcible possession in similar manner. The said decision has been considered in the later decision of the Apex Court in the case of Express Newspapers Pvt. Ltd. and others versus Express Newspapers Pvt. Ltd. and Others Vs. Union of India (UOI) and Others, in particular, paragraphs 80 to 86 thereof. In the latest decision of the Apex Court in the case of State of West Bengal and Others Vs. Vishnunarayan and Associates (P) Ltd. and Another, the

Apex Court restated this legal position in paragraph 21 as under:

21. In the absence of specific provision can a person, on the ground of public interest, be evicted by force by the State or its executive officers without following due course of law? In view of the ratio laid down in *Bishan Das and others (supra)* and *Maharaja Dharamander Prasad Singh and others (supra)*, we hold that such an action of eviction by force cannot be justified in law and for taking possession, action has to be taken in accordance with the law.

7. The Apex Court has expounded that taking over forcible possession in this manner is nothing short of destruction of the basic principle of rule of law and an autocratic act of the State, which cannot be countenanced.

8. In view of these decisions, we have no manner of doubt that the impugned action of the State, which is founded on order passed by the Deputy Commissioner, dated 26th October, 2013, to take over forcible possession, is completely against the constitutional guarantees and obligations of the State to be performed qua the citizens. Accordingly, we have no hesitation in not only staying the said order, but directing the State to forthwith restore the status quo ante as obtained on the night of 26th October, 2013 before taking over forcible possession of the subject land and building standing thereon alongwith the movables.

9. Counsel appearing for the respondents-State, however, argued that the interim relief, as is being granted, is sought only on two assertions, namely, that the action of the State is politically motivated and irreparable loss will be caused on account of sports schedule of the National and State matches being likely to be disturbed due to closure of the stadium.

10. In the first place, such technical argument does not augur well for the State, which has taken highhanded and unilateral action against the petitioners. In any case, the petitioners are not praying for relief only on the ground that the action of the respondents-State is politically motivated, but also because it is ex-facie without jurisdiction and without authority of law. As mentioned earlier, the Apex Court has deprecated such unilateral and highhanded action to be resorted to by the State to forcibly dispossess any person in settled possession.

11. It is also well settled position that the ownership of the building is distinct than the right in the grant of lease given by the State. Even if the State wanted to terminate the lease, the question of taking forcible possession of the building constructed on such land does not arise and the termination of lease cannot be the basis to do so. For that, the State is expected to resort to appropriate remedy, as may be advised.

12. Thus understood, the technical argument of lack of averments in the application for stay does not deter us from granting mandatory order. For, in paragraph 2 of the application, it has been stated that the petitioners would be placing reliance on the averments in the writ petition, which is supported by

affidavit and as being part and parcel of the application. In other words, the averments in the writ petition are incorporated by reference.

13. The fact that the petitioners have alleged that the decision is politically motivated and have failed to implead any person by name against whom such mala fide exercise of powers can be attributed does not mean that in the fact situation of the present case the petitioners are not entitled for mandatory relief, as prayed.

14. We are of the considered opinion that if the action of the State is unstatable and cannot be countenanced in law, as it is not only in violation of fundamental rights of the petitioners, but also opposed to the basic structure of the rule of law, the only way in which that grievance can be redressed is to direct restoration of status quo ante as obtained prior to 26th October, 2013, when forcible possession of the stadium and the land has been taken over by the State, to restore faith in the rule of law. In our opinion, the technical objection raised by the respondents cannot be the basis to deny that relief.

15. The respondents had also urged before us that the petition is not presented under proper authority of petitioner No. 1-company. That argument was canvassed on the basis of Annexure P-1. We may agree with the argument of the respondents that the resolution, Annexure P-1, as placed on record, may not be sufficient to justify authorization for filing of the present petition on behalf of the company by petitioner No. 2. Nevertheless, from the material on record including the order of the Registrar, which is indisputable, it is evident that petitioner No. 2 is the Director of petitioner No. 1-Company established u/s 25 of the Companies Act. Petitioner No. 2, in that capacity, therefore, is entitled to pursue the reliefs, as claimed in the petition. Moreover, the objection regarding improper authorization in the shape of Annexure P-1 can always be redressed, as it is a curable defect, during the pendency of the writ petition.

16. We are, therefore, not impressed with the abovesaid preliminary objections raised by the respondents. Counsel for the respondents did make an attempt to justify the order passed by the Deputy Commissioner on the basis of the direction contained in the order passed by the Principal Secretary (Revenue) to the Government of Himachal Pradesh, which is also subject matter of challenge in this writ petition. In the last paragraph of the said order, the officers named in the opening part of the order were directed to take immediate possession of the leased land free from all encumbrances. That does not mean that the Deputy Commissioner was authorized by the Principal Secretary (Revenue) to the Government of Himachal Pradesh to take forcible possession of land and building by using police force.

17. For the time being, suffice it to observe that the action of the respondents-State is completely without authority of law and opposed to the cardinal principles and constitutional guarantees, for which reason we direct the respondents-State to forthwith restore the status quo ante which obtained on the

night of 26th October, 2013. We are not going into any other issue as were argued before us by the respective parties. That can be considered at the appropriate stage, after the detailed affidavits are filed by the respective parties.

18. We make it clear that the restoration of status quo ante is no impediment for the State Authorities to proceed with legal remedies and actions, as may be permissible in law, which can be resorted to by the State Authorities, including respondent No. 2, against concerned persons, including the petitioners herein. That will have to proceed in accordance with law.

19. Needless to observe that the opinion expressed hitherto is only prima facie and for considering grant of interim relief, as prayed for and as has been granted in terms of this order. Other issues will be decided on its own merits in accordance with law in the main writ petition.

20. We further clarify that the Registrar (Respondent No. 2) may proceed in the matter pending before him but shall not pass any final order till further orders to be passed by this Court. Counsel for the respondents-State pray for time to file reply-affidavit till 18th November, 2013. Rejoinder be filed on or before 25th November, 2013. List this matter on 28th November, 2013.

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