
(2016) 09 SHI CK 0069
In the High Court Of Himachal Pradesh
Case No : CWP No. 4127 of 2010

Jitender Kumar

APPELLANT

Vs

The Financial Commissioner (Appeals)

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Himachal Pradesh Nautor Land Rules, 1968 — Rule 28, Rule 30

Citation : (2016) 4 HimLR 2524 : (2017) 1 SimLC 226

Hon'ble Judges : Mr. Ajay Mohan Goel, J.

Bench : Single Bench

Advocate : Mr. Sanjeev Kuthiala, Advocate, for the Petitioners; Mr. Pankaj Negi, Deputy, Advocate General, for the Respondent Nos. 1 to 3; Mr. Rajnish K. Lal, Advocate, for the Respondent No. 4

Final Decision : Disposed Off

Judgement

Ajay Mohan Goel, J. - By way of the present writ petition, the petitioners have prayed for the following reliefs:

"(i) To call for the records of the case pertaining to revision Petition No. 112 of 2009, titled Pankaj Kumar v. Jitender Kumar and others and after examining the legality and propriety of the impugned order Annexure P-8, to set aside the same.

(ii) That in the alternative, to direct respondent No. 3 to decide the matter in a time bound schedule with respect to the grant of Nautor of the land in question and also ensure the protection of the rights of the petitioner during this period and also the status with respect to the ownership and possession and the revenue entries.

(iii) Any other relief which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also kindly be granted in favour of the petitioner and as against the respondent."

2. Brief facts necessary for the adjudication of the present case are that

predecessor of the petitioners, namely Shri Gosain applied for grant of Nautor land in the year 1960, which Nautor was sanctioned in favour of Shri Gosain vide order dated 10.01.1975. Pursuant to objections filed by one Shri Tawaira against the said sanction, the same was set aside by respondent No. 1 vide order dated 07.08.1992 on the ground that the portion of sanctioned land was not suitable for horticulture purpose. Respondent No. 1 directed Deputy Commissioner, Mandi/ Sub Divisional Officer (Civil), Chachiyot to give alternative land to the petitioners. Pursuant to the said order, Sub Divisional Officer (Civil) sanctioned 4-3-10 bighas of land comprised in Khasra Nos. 620,1682/633/2, 1682/633/3, 1584/1171/1, 296/1, 1724/1588/2, 1703/1316/1, Kita 8, situated in Mohal Gohar, Tehsil Chachiot in favour of the petitioners. Thereafter, mutation was also entered in favour of the petitioners and consequent upon the mutation of grant of Nautor land, jamabandi for revenue estate was also prepared and in the jamabandi for the year 2000-2001, names of the petitioners were shown as owners in possession pertaining to the land in issue. As per the petitioners, on the basis of said grant, they had developed the land and also made it cultivable. They were growing crops on the same by way of barricading and fencing by barbed wires. 3. The grant of above land by way of Nautor in the year 1992 was again challenged by way of an appeal filed under Rule 28 of the Himachal Pradesh Nautor Land Rules, 1968 before the Court of Deputy Commissioner, Mandi in the year 2006 by one Pankaj Kumar (present respondent No. 4). Deputy Commissioner, Mandi vide order dated 27.11.2006 dismissed the appeal so filed by inter alia holding that there was no infirmity in the grant of said land by way of Nautor in the year 1992 in favour of the petitioners and by further holding that the appeal was also hopelessly barred by limitation. 4. Feeling aggrieved by the said order passed by Deputy Commissioner, Mandi dated 27.11.2006, Pankaj Kumar filed an appeal before the next appellate authority provided under Rule 28 of the Himachal Pradesh Nautor Land Rules, 1968, i.e. Divisional Commissioner, Mandi Division. Divisional Commissioner, Mandi forwarded the case to the Financial Commissioner (Appeals), Himachal Pradesh by way of recommendation on the basis of reasonings returned by the said authority vide order dated 23.07.2009 passed in Case No 95/2007, which order with the consent of parties was taken on record by this Court on 07.09.2016 as the same was necessary for the purpose of adjudication of the case. Learned Financial Commissioner (Appeals) vide decision dated 04.05.2010 agreed with the recommendation of Divisional Commissioner, Mandi Division and set aside order dated 27.11.2006 passed by Deputy Commissioner, Mandi in File No. 2 of 2006 as well as order of Sub Divisional Officer (Civil), Chachiyot at Gohar sanctioning grant of Nautor land in favour of the petitioners. Financial Commissioner (Appeals) also remanded the case back to Sub Divisional Officer (Civil) to decide the case afresh in light of the observations made by him in order dated 04.05.2010. This order passed by Financial Commissioner (Appeals) is under challenged by way of the present writ petition. 5. I have heard the learned counsel for the parties and have also carefully gone through the documents produced on record by the respective parties. 6. Order dated 27.11.2006 passed by Deputy Commissioner, Mandi in

File No. 2 of 2006 was an adjudication done by the said authority in an appeal which was filed by Pankaj Kumar (i.e. respondent No. 4 in the present writ petition) under Rule 28 of the Himachal Pradesh Nautor Land Rules, 1968. Under the provisions of Rule 28 of the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter referred to as 'the Nautor Rules'), further appeal from the appellate order of Deputy Commissioner lies to the Commissioner within 30 days from the date of the order. It is an admitted fact that feeling aggrieved by the order dated 27.11.2006 Pankaj Kumar filed an appeal before Divisional Commissioner, Mandi Division against the appellate order passed by Deputy Commissioner. However, Commissioner rather than deciding the said appeal as an appellate Court, ordered the appeal to be treated as Revision under the Nautor Rules and thereafter went upon to recommend Financial Commissioner (Appeals), Himachal Pradesh for passing of an appropriate order as it deemed fit. This is evident from perusal of order dated 23.07.2009, last part of which is quoted herein below:

"In view of the above observations, the present appeal, which has been ordered to be treated as a revision under the H.P. Nautor Land Rules, 1968, is recommended to the learned Financial Commissioner (Appeals), Himachal Pradesh, Shimla (HP) for passing an appropriate order as deems fit in the present revision. All relevant record files be submitted along with this recommendation. Since, the order in this appeal was kept reserve as such a copy of this order be communicated to the parties through a registered post. A copy of the order be sent to the lower courts for information."

7. The factum of Pankaj Kumar having filed an appeal against the appellate order passed by the Deputy Commissioner is also evident from Annexure P-7 in which the type of case is mentioned as 'Nautor Appeal'. In fact Annexure P-7 is the official communication through which the matter was sent by way of recommendation for further adjudication to Financial Commissioner (Appeals), Himachal Pradesh. Financial Commissioner (Appeals) acting on the recommendation so made by Commissioner, Mandi Division in Case No. 95/2007 dated 23.07.2009 passed order dated 04.05.2010, impugned in the present petition, and vide said order, while agreeing with the recommendation of Commissioner, Mandi Division, said authority set aside order passed by Deputy Commissioner, Mandi dated 27.11.2006 passed in File No. 2 of 2006 as well as order of Sub Divisional Officer (Civil), Chachiyot at Gohar sanctioning grant of Nautor land in favour of the present petitioners. Financial Commissioner (Appeals) further ordered the case to be remanded to Sub Divisional Officer (Civil) with a direction to decide the case afresh in the light of observations made in the order after following proper procedure as laid down in Nautor Rules. 8. I have heard the learned counsel for the parties and also gone through the records of the case. 9. In my considered view, the act of Divisional Commissioner, Mandi Division of treating the appeal filed by Pankaj Kumar against the appellate order of Deputy Commissioner as a Revision under the Himachal Pradesh Nautor Land Rules, 1968 and thereafter recommending the case to Financial Commissioner (Appeals), Himachal Pradesh for passing appropriate order was totally unjustified

and illegal. The power of appeal and the power of revision conferred upon different authorities under the provisions of Nautor Rules are totally different and distinct. Rule 28 of the said Rules deals with power of appeal, whereas Rule 30 deals with power of revision. Both these Rules are quoted herein below:

"28. An appeal from the order of the S.D.O. (C) under rule 16 shall lie to the Deputy Commissioner within 60 days from the date of the order. A further appeal from the appellate order of the Deputy Commissioner shall lie to the Commissioner within 60 days from the date of the order. In the case of original grant made by the Deputy Commissioner, an appeal from his order shall lie to the Commissioner within 60 days from the date of order and a second appeal to the Financial Commissioner within 90 days from the date of order;

Provided that no second appeal shall lie when the original order is confirmed on first appeal.

30. Revision. - (1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed of by any officer subordinate to him.

(2) The Commissioner may at any time call for the record of any case pending before, or disposed of by any officer subordinate to him.

(3) If, in any case, in which the Commissioner has called for the record, he is of the opinion that the proceeding taken order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner.

(4) The Financial Commissioner may in any case called for by himself under sub-rule (i) or reported to him under sub-rule (iii) pass such order as he thinks fit.

Provided that he shall not under this rule pass any order reversing or modifying any proceedings or orders of the subordinate Revenue Officer without giving the parties concerned an opportunity of being heard."

10. A perusal of the provisions of Rule 30 demonstrate that in exercise of its revisional powers, Commissioner may at any time call for the record of any case pending or disposed of by any officer subordinate to him and if in any case in which Commissioner has called for the record he is of the opinion that the said proceeding should be modified or reversed, then he shall report the case with his opinion thereon for the orders of the Financial Commissioner. 11. In the present case, the proceedings before the Commissioner were not by way of Revision. The proceedings with which the Commissioner was seized were appellate proceedings. Rule 28 of the Nautor Rules does not contain any such provision that while exercising its appellate powers, Commissioner can convert the said appeal into a revision and thereafter proceed with the matter as if he was hearing a revision petition. 12. Therefore, in my considered view, the act of the Commissioner of converting the appeal into a revision petition and thereafter recommending the same for further action to the Financial Commissioner

(Appeals) as per the provisions of Rule 30 of the Nautor Rules rather than adjudicating upon the same as an appellate Court was an act without jurisdiction. As the recommendation made by Divisional Commissioner to the Financial Commissioner vide order dated 23.07.2009 was a nullity, the subsequent order passed by the Financial Commissioner (Appeals) in Revision Petition No. 112/2009 dated 04.05.2010 on the basis of recommendation made by Divisional Commissioner, Mandi is also non est and not sustainable in law. 13. Therefore, in view of the discussion held above, the writ petition is allowed. Order dated 04.05.2010 passed by Financial Commissioner (Appeals), Himachal Pradesh, Camp at Mandi in Revision Petition No. 112/2009 appended with the petition as Annexure P-8 is quashed and set aside and so is the recommendation made by Divisional Commissioner, Mandi dated 23.07.2009. The case is accordingly remanded back to Divisional Commissioner, Mandi Division for adjudication afresh from the stage of appeal which was filed by Pankaj Kumar against the appellate order passed by Deputy Commissioner, Mandi. It is made clear that the appeal shall be heard and adjudicated by Divisional Commissioner, Mandi Division on merit totally uninfluenced by any observations made by this Court or in the orders/recommendation earlier passed by Financial Commissioner (Appeals) and Divisional Commissioner, Mandi which have been set aside by this Court. It goes without saying that while deciding the appeal, Divisional Commissioner, Mandi Division will take into consideration all the issues raised before it by both the parties including that of locus standi as well as delay and latches/limitation and maintainability of the second appeal. Keeping in view the fact that the matter is an old one, this Court hopes and trusts that Divisional Commissioner, Mandi shall made all endeavour to adjudicate upon the appeal as expeditiously as possible. With the said directions, the present writ petition is disposed of. No order as to costs. .