

(2017) 05 SHI CK 0140
In the High Court Of Himachal Pradesh
Case No : 3863 of 2015

MANOJ KUMAR

APPELLANT

Vs

STATE OF HIMACHAL PRADESH AND OTHERS

RESPONDENT

Date of Decision : 29-05-2017

Acts Referred:

[Himachal Pradesh Land Revenue Act, 1954](#), [Section 107](#)

Citation : (2017) 05 SHI CK 0140

Hon'ble Judges : Sanjay Karol, Tarlok Singh Chauhan

Bench : Division Bench

Advocate : Rajiv Jiwan, Anup Rattan, Kush Sharma, Vivek Sharma

Final Decision : Dismissed

Judgement

1. The predecessor-in-interest of the petitioner Jayanti Dass was found to be encroacher over the Government land comprised in Khasra No. 739/1 and 742/1, measuring 0-0-12 and 0-0-11 bighas situated in Muhal Karsog/416, in proceedings initiated against him under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (for short "Act"). The original order of eviction was passed by Sub Divisional Officer (Civil), Kasrog on 20.12.2001 and the appeal preferred against the said decision was also dismissed by the learned Divisional Commissioner, Mandi vide order dated 2. 6.2004.

2. On 1.7.2015 this Court in CWP No. 7879 of 2014 titled as Mehar Singh vs. State of Himachal Pradesh and others directed the authorities to pass orders within four weeks in 192 cases of encroachments that had been detected by PWD authorities at Karsog after getting demarcation to this effect from the Tehsildar, Karsog.

3. Since the petitioner had not removed the encroachment, he too, was served with a notice of eviction and therefore apprehending his eviction, has filed the instant petition for the grant of following reliefs: (a) That respondent No.3 be

directed to not to proceed in pursuance to the order dated 20.12.2001(Annexure P-30) passed by Ld. Sub Divisional Collector under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act 1971, till the final order is passed in the proposed CMPMO.

b) In the alternative respondent No.3 be restrained from proceeding against the petitioner till demarcation is carried out by the Competent Authority as provided under Section 107 of the H.P. Land Revenue Act visà- vis the instructions contained under Clause 10.10 Chapter 10 on demarcation of the H.P. Land Record Manual by the competent authority in accordance with the procedure contained therein."

4. It is averred that the petitioner cannot be evicted as no demarcation had been carried out to find out the exact extent of the land so encroached by him and moreover, the petitioner has already demolished the structure over the encroached land and thus nothing remains to be executed.

5. The respondents have contested the petition by filing reply wherein it is averred that in pursuance to the directions passed by this Court in Mehar Singh's case (supra), the Tehsildar Karsog was directed to demarcate the land and submit his report regarding unauthorized construction/ encroachment on Shimla Mandi Road via Tattapani (Karsog line) in Muhal Sanarli to Karsog Bazar including hospital road. The Field Kanungo reported to the Tehsildar Karsog 5 number of encroachment cases including the one relating to the father of the petitioner.

6. As regards the allegation of the petitioner that he had already removed the encroachment, it has been specifically stated that the Field Revenue Agency in order to ascertain the encroachment had marked the encroached land of the petitioner by red colour on the spot. The petitioner thereafter had himself in the presence of the revenue field staff demolished the wall and verandah of his shop on the ground floor but had not demolished the verandah of first and second floor of his residential house. We have heard learned counsel for the parties and gone through the material placed on record.

7. At the out-set, it may be observed that the parties are ad idem that as regards the encroachment on the ground floor the petitioner has removed the same. However, he has not demolished the verandah of the first floor and second floor of his residential house, which are over-handing the encroached land. Confronted with this, learned counsel for the petitioner would argue that in absence of demarcation, the respondents cannot ask for the demolition.

8. We are afraid that such submission has been raised only to be rejected for the simple reason that the demarcation had already been carried out and the encroached portion of land was marked with red colour on the spot. It was thereafter that the petitioner of his own volition removed the encroachment, but that was only with respect to the ground floor. As regards the verandah of the first and second floor of his residential house, these still exist on the spot as is evident from the photographs annexed by the petitioner himself with the petition

as Annexure P-4 and are thus liable to be demolished in terms of the judgment already rendered by this Court in Mehar Singh's case (supra)

9. In view of the above discussion, we find no merit in this petition and the same is accordingly dismissed, so also the pending application(s) if any, leaving the parties to bear their own costs.