

(2003) 05 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 362 of 1995

Nant Ram and Others

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 09-05-2003

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Himachal Pradesh Nautor Land Rules, 1968 — Rule 12, 19, 24, 25, 30

Citation : (2003) 2 ShimLC 205

Hon'ble Judges : R.L. Khurana, J

Bench : Single Bench

Advocate : Onkar Jairath, for the Appellant; Ashutosh Burathoki, Additional A.G. for Respondents 1 and 2 and Sunit Goel, for Respondents Nos. 3 to 8, for the Respondent

Final Decision : Allowed

Judgement

R.L. Khurana, J.—Land measuring 2 bighas 15 biswas comprising of Khasra No. 5286, khata/khatauni No. 792/1256 and measuring 19 biswas comprising of khasra No. 5287, khata/khatauni No. 793/1257 in Phati Burua, Kothi Manali, Tehsil and District Kullu, was granted to the Petitioners on 28.1.1977 as "Nautor" under the Himachal Pradesh Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme, 1975 (for short: the scheme) vide "Patta" copy of which is Annexure P-I to the petition. The grant contained a stipulation in the following terms:

The grant of the aforesaid land is given on the condition that the grantee shall not be able to transfer the land granted under this Scheme to any person within a period of 15 years from the date of taking over the possession of land by him. In the event of contravention the grant shall be liable to be resumed by the State Government. Similarly, if he fails to break up the land within a period of two years from the date of taking over the possession of the land, the grant shall be liable to be resumed.

2. The Petitioners were put into possession of the land allotted to them. They after having fenced the same brought it under cultivation.

3. It appears that a dispute about the abovesaid land arose between the Petitioners and Respondents No. 6 to 10 which led to filing of a civil suit, being Civil Suit No. 14 of 1994, by the Petitioners for declaration and injunction as a consequential relief, and in the alternative for possession. The parties to the suit arrived at a compromise. Copies of the compromise arrived at between the parties are Annexures P3 and P3/X to the petition. Such civil suit was decided on 16.12.1994 by the Senior Sub Judge, Kullu on the basis of the compromise arrived at between the parties. The Plaintiffs were declared to be the owners and in possession of the land measuring 2 bighas 15 biswas comprising of khasra No. 5286 and land measuring 9 biswas 10 biswansis, that is, half share of land measuring 19 biswas comprising of khasra No. 5287. Respondents No. 6 to 8 were declared to be the owners and in possession of the remaining half share of the land comprising of khasra No. 5287 by way of exchange from the Petitioners.

4. While the above noted civil suit was still pending, Respondents No. 1 to 3 on 23.4.1994 had moved the Deputy Commissioner, Kullu, by way of a revision petition seeking the cancellation of the grant of land made in favour of the Petitioners on 28.1.1977. Two grounds were put forth by the Respondents No. 1 to 3 for seeking the cancellation of the grant in favour of the Petitioners, namely:

(a) the Petitioners at the time of grant were minors and as such were not competent to swear and make affidavits in support of their application for the grant of the land under the scheme; and

(b) the Petitioners without having entered into possession of the land, in contravention of the condition of the grant prohibiting the transfer of such land during the specified period, had exchanged the land with some other land.

5. The Deputy Commissioner upon inquiry found that the Petitioners had in violation of the condition of the grant exchanged a part of the land granted to them. The other ground put forth by the Respondents No. 1 to 3 did not find favour with the Deputy Commissioner, since it was found that application for the grant of land under the Scheme was made by the mother of the Petitioners as their guardian and the affidavit in support was also of the mother of the Petitioners. Having arrived at the conclusion that the Petitioners had contravened the condition of the grant, the Deputy Commissioner exercising the powers under paragraph 9A of the Scheme, vide order dated 23.2.1995 (copy whereof is annexed as Annexure P4 to the petition) cancelled the grant of land made on 28.1.1997 in favour of the Petitioners. He also directed that the amount paid by the Petitioners as "Nazrana" shall stand forfeited to the State Government and that the land in question shall stand vested in the State Government forthwith.

6. Aggrieved by the order dated 23.2.1995 (Annexure P4) the Petitioners have approached this Court by way of the present writ petition under Article 226/227, Constitution of India, claiming the following reliefs:

- (i) the alleged compromise deeds Annexures P3 and P3/X, being illegal be quashed and set aside;
- (ii) the order dated 23.2.1995 (Annexure P4) of the Deputy Commissioner, Kullu cancelling the grant be quashed and set aside; and
- (iii) Respondents be directed not to interfere with the possession of the Petitioners over the land in question in any manner.

7. Respondents No. 1 and 2 in their reply-affidavit have admitted the grant of land as "Nautor" under the scheme in favour of the Petitioners vide Annexure P1. They have averred that as per the stipulation contained in this grant the Petitioners could not have transferred the land or any part thereof in any manner during a period of 15 years beginning from the date they were placed into possession of the land in question. The Petitioners had transferred by way of exchange a part of the land allotted to them within the stipulated period of 15 years and this had contravened the condition of the grant. Therefore, the grant was rightly and legally cancelled.

8. Respondents No. 3 to 8 vide their separate reply-affidavit have also pleaded that since the Petitioners had contravened the condition of the grant, such grant was legally and validly cancelled vide order Annexure P4.

9. There is no denying that the Deputy Commissioner (Respondent No. 2) had cancelled the grant vide Annexure P4 in exercise of the powers vested in him under paragraph 9A of the scheme.

10. Paragraph 9A of the Scheme which deals with the power of revision, reads:

If at any time, it comes to the notice of the Commissioner either through an application made by any person or otherwise, that the allotment of any land under this Scheme was made to a person who was not entitled or eligible for such allotment or the allotment was wrong on any other ground, he may call for the record of the case and after making such enquiry as he thinks proper in person or through a Revenue Officer subordinate to him and after giving an opportunity to the parties concerned, he may cancel the grant of land and make such other orders in connection therewith as he deems necessary in the circumstances of the case.

11. A bare reading of the above provision shows that power of revision can be exercised by the Commissioner only in the following two eventualities, namely:

- (a) the grant was made to a person who was not entitled or eligible for allotment; or
- (b) the allotment made was wrong on any other grounds.

12. The case of cancellation of a grant on the ground of violation and/or contravention of the condition (9) of the grant does not fall within the ambit of paragraph 9A of the Scheme. Therefore, in the present case, Respondent No.2

acting under paragraph 9A of the Scheme could not have cancelled the grant on the ground that the Petitioners had contravened the condition of the grant by transferring a part of the land allotted to them by way of exchange within the prohibited period of 15 days.

13. Rule 12 of the H.P. Nautor Land Rules, 1968 (for short: the rules) deals with the resumption of the land granted as "Nautor" under the Scheme. The said rule, in so far as it is material for the purpose of the present case, reads:

The grant of Nautor land shall be cancelled and land granted resumed by the State Government without payment of compensation in the following events:

(a)

(b)

(c)

(d)

(e)

(f) if, the grantee or his legal representative successor alienates the land granted in nautor, within 15 years from the date of the patta, or if he alienates, it, at any time for a purpose other than the one for which the land was granted to him in the event of other kind of alienation the power to the State Government to cancel the grant and to resume the land shall govern the alienation also, and

(g)

14. Rule 19 of the Rules stipulates that subject to the provisions contained in the Rules, the grantee shall be bound by the conditions of the patta.

15. Rules 24 and 25 of the Rules deal with the procedure to be followed for resumption of the land under Rule 12.

16. Rule 24 provides that when the Sub Divisional Officer (Civil) is satisfied that a grantee has committed a breach of the conditions of his grant, he shall, before ordering resumption under the rules, give the grantee an opportunity to appear and state his objections to the cancellation and resumption, and having recorded the statement he may either:

(a) extend the period for fulfilment of the conditions of the grant by one year for valid reasons to be recorded in writing; or

(b) recommend to the Deputy Commissioner that a longer extension of time may be granted within which to fulfil the conditions or that the breach of the conditions may be condoned with or without payment of penalty, or that the grant may be resumed.

17. Under Rule 25, the Deputy Commissioner, on the receipt of the report submitted to him under Rule 24, is to pass such orders as he may deem fit after

giving an opportunity to the person affected to be heard.

18. The power to cancel the grant and resume the land can be exercised by the Deputy Commissioner only under Rule 25 of the Rules and that too on the basis of the report submitted to him by the Sub Divisional Officer (Civil) under Rule 24. In the absence of the report under Rule 24, the Deputy Commissioner neither suo motu nor on the basis of a petition/complaint of a third party can act under Rule 25 and order the cancellation of the grant and resumption of the land.

19. A contention was raised on behalf of the Respondents No. 1 and 2 that even if it be assumed that in the absence of a report under Rule 24, the Deputy Commissioner could not have acted and cancel the grant under Rule 25, the Deputy Commissioner in exercise of the revisional powers under Rule 30 of the Rules order cancellation of the grant by reversing the order of grant, Annexure PI.

20. There is no merit in the contention put forth by the learned Counsel for Respondent Nos. 1 and 2. A bare reading of the provisions contained in Rule 30 shows that the Deputy Commissioner has no power of revision thereunder. Such revisional powers are exercisable only by a Financial Commissioner or a Commissioner. Rule 30 provides:

(1) The Financial Commissioner may at any time call for the record of any case pending before, or disposed off 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 (1) or reported to him under Sub-rule (3) 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.

21. Even if it be assumed that Respondent No. 2 has been invested with the powers of the Commissioner within the meaning of Rule 30(2) above, the impugned order as at Annexure P4 is bad since he could not have passed a final order cancelling the allotment dated 28.1.1977 and order resumption of the land. He could only report the case alongwith his opinion to the Financial Commissioner for passing the appropriate orders.

22. There is yet another aspect of the case. If the impugned order, Annexure P4, is taken to have been passed under Rule 30 in exercise of the revisional powers, such powers could have been exercised only within a period of three years from the date of grant as has been held by the Full Bench of this Court in Mangheru v.

State of H.P. and Ors. ILR 1981 HP. 283.

23. In the present case, the powers on the face of it have been exercised more than 18 years of the grant. Therefore, the impugned order Annexure P4, on this ground also cannot be sustained.

24. The relief claimed by the Petitioners as to the compromise deeds, Annexures P3 and P3/X, cannot be granted in the present writ petition since such compromise is shown to have been arrived at between the Petitioners and Respondents 6 to 10 in a Civil Suit. The Petitioners may, if so advised, seek the relief prayed for before the appropriate forum in appropriate proceedings.

25. Resultantly, the present petition is partly allowed and the order dated 23.2.1995 (Annexure P4) passed by Respondent No. 2 (Deputy Commissioner, Kullu) cancelling the grant and ordering resumption of the land is quashed and set aside. Respondent Nos. 1 and 2 shall not take any action against the Petitioners in pursuance of the said order dated 23.2.1995. Parties are left to bear their own costs.