
(2015) 06 SHI CK 0067
In the High Court Of Himachal Pradesh
Case No : CWP No. 9859 of 2013

Narinder Lal Negi

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 25-06-2015

Acts Referred:

Limitation Act, 1963 — Section 27

Transfer of Property Act, 1882 — Section 60, 62

Citation : (2015) 06 SHI CK 0067

Hon'ble Judges : Rajiv Sharma, J;Sureshwar Thakur, J

Bench : Division Bench

Advocate : T.S. Chauhan, for the Appellant; M.A. Khan, Additional Advocate General and P.M. Negi, Deputy Advocate General, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sharma, J.—Though the present petition is a private litigation, but it has been treated as a Public Interest Litigation, since a question of great public importance has been raised and also on the basis of the material placed on record by the State Government in sequel to various orders, passed by this Court, which shows total recklessness on the part of the statutory authorities under The Himachal Pradesh Nautor Land Rules, 1968 to allot Nautor land in contravention of the Rules.

2. Petitioner was granted Nautor land measuring 0-00-79 hectares, situated in Up Mohal Chirgaon, Tehsill Nichar, District Kinnaur vide order, dated 27th December, 1989. The Sub-Divisional Officer (Civil) reviewed the said order vide order, dated 5th March, 1993 and cancelled the order of Nautor land granted in favour of the petitioner. Petitioner filed an appeal before the Deputy Commissioner, Kinnaur against the order, dated 5th March, 1993. The appeal was dismissed vide order, dated 5th June, 1993. Petitioner filed the revision petition before the Financial Commissioner bearing Civil Revision No. 264 of 1994, which was partly accepted by the Financial Commissioner on 16.08.1996 and the case

was remanded back to the Deputy Commissioner, Shimla. The Deputy Commissioner, Shimla dismissed the same on 24.02.1997. The petitioner filed the revision petition against the order, dated 24.02.1997 before the Financial Commissioner (Appeals), Himachal Pradesh, Shimla bearing Revision Petition No. 58/97. The case was remanded back to the Sub-Divisional Officer (C), Nichar vide order, dated 05.11.2003. The Sub-Divisional Officer (C), conducted the spot investigation on 20.01.2004. He recommended the cancellation of the Nautor land granted in favour of the petitioner vide Annexure P-4. Thereafter, on the recommendations made by the SDO (C), the Nautor land granted in favour of the petitioner was cancelled by the Deputy Commissioner, Kinnur. Petitioner filed a revision petition before the Divisional Commissioner, Shimla, which was dismissed in default and an application for restoration of the same was also dismissed on 04.04.2011 vide Annexure P-5. Thereafter, the petitioner filed a revision petition against the order, dated 04.04.2011, before the Financial Commissioner (Appeals), Himachal Pradesh, Shimla-2. The Financial Commissioner (Appeals), H.P. dismissed the revision petition on 27.08.2013 by upholding the order, dated 04.04.2011, passed by the Divisional Commissioner, Shimla.

3. The respondent-State has framed the Rules called "The Himachal Pradesh Nautor Land Rules, 1968". Rule-3 defines the expressions "Nautor Land", "Tenant", "Landowner", "Circle", "Resident" and "State Government". Rule-5 provides the purpose for which Nautor Land could be granted, which reads thus:

"5. Purpose for which nautor land may be granted:-

Nautor land may be granted only for one or more of the following purposes, namely:-

(a) Horticulture.

(b) Agriculture, including raising of fodder, growing of vegetables, growing of any special grasses, herbs, shrubs and trees for domestic use or for cash income and dairy farming.

(c) Construction of:-

(i) Any building subservient to agriculture;

(ii) thrashing floor;

(iii) water mill; and

(iv) water channel

(d) construction of a building for resident.

(e) Consolidation of Holdings.

(f) For genuine public purposes like construction of Dharmsala, etc."

4. Rule-6 prescribes the maximum limit of grant of Nautor Land, which reads as under:

"6. The maximum limit of grant-Maximum limits to grant nautor land shall be as under:-

(i) For horticultural purposes.....20 bighas

(ii) (a) For Agriculture20 bighas

(b) For raising of fodder, growing of vegetables, growing of any special grasses, herbs, shrubs and trees for domestic use or for cash income and dairy farming.

(iii) for water mills2 bighas

(the land actually required for taking out a water channel for the water mill shall be sanctioned in addition as actually needed or, in alternative, only the right to take out the water channel through Government land shall be allowed if grant of nautor land be against public interest in any case).

(iv) For a thrashing floor2 biswas

(v) For a building subservient to agriculture or construction of a residential house.1 bigha.

Provided that if an applicant already holds some land under him, the grant of nautor land under sub-rule (i) and (ii) above shall be restricted only to the extent by which his total holding falls short of 20 bighas, except in the case of Pangi and Bharmaur areas of Chamba District, Panddrabis and Dodra Kwar areas of Shimla District and the whole of Lahaul and Spiti and Kinnaur Districts where dhanks and ghasnis, if any, comprised in his holding shall be excluded therefrom while calculating this limit of 20 bighas.

and (ii) severally or collectively. The grants for other purposes, can be obtained in addition thereto.

Provided further that a person who is granted nautor for a house site shall not become by virtue of this grant, right holder in the revenue estate in which such grant is made and it shall not entitle him to acquire nautor under these Rules.

Explanation:-In the case of a joint holding i.e. a holding held jointly by more persons than one, the respective proportionate share of each joint holder, as entered in the revenue records shall be taken to be holding, for the purposes of the limits within which nautor land may be granted, in respect of each joint holder."

5. Rule-7 lays down the eligibility for the grant of Nautor land, which reads as under:

"7. Eligibility for nautor land:-Save for the widow and the children of a member of an armed force or semi-armed force, who has laid down his life for the country

(whose widow and children were eligible for grant anywhere within the Tehsil subject to the conditions mentioned in the wajib-ul-Ari in respect of the areas where the land applied for is situated) no one who is not the resident in the estate in which the land applied for is situated, shall be eligible for the grant. Every resident of the estate in which the land applied for lies will be eligible in the following orders of preference:-

(a) Such persons who have less than ten bighas of land under self cultivation on 1.1.1974, whether as owners, or as tenants, or as lessees, either individually or collectively, or have an income of less than Rs. 2000/- per annum from all sources including lands. Provided that in this category a dependent of one who has laid down his life for the defence of the country will get preference over his counterparts.

(b) Scheduled Castes and Scheduled Tribes applicants; and

(c) The deponents of those who have laid down their lives for the defence of the country Service, for the defence of the country will mean service in a uniformed force as well as in the capacity of civilian, so long as the death occurs on a front, be it military or civil.

(d) Services personnel in the armed forces and Ex-servicemen.

(e) Panchayats.

(f) Others.

Provided that a bonafide landless resident of Spiti shall be eligible for the grant of land in Nautor within the Spiti Sub-Division."

6. Rule-12 prescribes for resumption of the Nautor land, which reads as under:

"12. Resumption-The grant of nautor land shall be cancelled and the land granted resumed by the State Government without payment of any compensation in the following events:

(a) if, in the case of ordinary agriculture, the grantee fails to break the land granted to him within two years from the date of the patta.

(b) if, in the case of horticulture, the grantee fails to plant the area with fruit trees within two years from the date of the patta.

(c) If, in the case of a water mill and a water channel, the grantee fails to set up the water mill, or to dig out the water channel, as the case may be, within two years from the date of the patta.

(d) If, in the case of nautor for any other purpose the guarantee fails substantially to start utilization of the land for the purpose for which the nautor land has been granted to him within two years of the grant of the patta.

(e) If the grantee, at any time, uses the land for any purpose other than the

purpose for which the grant was made to him.

(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 alienance also; and

(g) if, the grantee secures the sanction of nautor by suppression of material facts in his nautor application

Provided that the periods laid down in (a), (b), (c) and (d) shall in each case, by counted after the removal of trees by the Forest Department/Deputy Commissioner whenever it becomes the responsibility of that Department, Deputy Commissioner to dispose of trees under these rules.

7. The manner in which an application has to be submitted for grant of Nautor land is provided under Rule-13, which reads thus:

"13. Application for Nautor Land-Application in form (c) appended to these rules, duly accompanied by three blank application forms shall be made to the Sub-Divisional Officer (Civil) of the Sub-Division in whose jurisdiction, the land applied for is situated. The original application shall bear a court fee stamp of Rs. 2.50 and shall be accompanied by a Tatima Shajra (Supplementary Map) to be prepared by the Patwari on the spot showing the arda applied for. The Tatima Shajra should indicate the boundaries of the Land applied for, on all the sides, with specific reference to at least two permanent boundary marks or fixed marks near enough which should be easily identified on the spot and with the help of which the plot applied for could undoubtedly be located on the spot. Such a copy of the Tatima Shajra shall invariably be attached to the patta to be executed according to rules, the Tatima Shajra should also contain the following additional details to be given thereon by the Patwari:-

(h) The area and the field No. of the land applied for in the Nautor;

(i) the total area of the waste land and its Khasra No. out of which nautor has been applied for; and

(j) the number of standing trees, if any on the land applied for.

8. The application form (c) was required to be duly accompanied by three blank application forms to be made to the Sub-Divisional Officer (Civil) of the Sub-Division in whose jurisdiction the land applied for was situated. It was required to be accompanied by a Tatima Shajra (Supplementary Map) to be prepared by the Patwari on the spot showing the area applied for. The Tatima Shajra was required to indicate the boundaries of the land applied for on all sides with specific reference to at least two permanent boundary marks or fixed marks, which could be easily identified on the spot and with the help of which the plot applied for could undoubtedly be located on the spot. The Tatima Shajra was required to

contain the additional details to be given thereon by the Patwari, i.e., the area and the field number of the land applied for in the Nautor, the total area of the waste land and its Khasra number out of which nautor has been applied for and the number of standing trees, if any on the land applied for.

9. Rule-14 lays down the procedure in which the application submitted under Rule-13 was to be processed. Rule-16 provides that the Sub-Divisional Officer (Civil) of the SubDivision shall be competent to grant nautor land up to the maximum limits prescribed in Rule-6 and such application was to be disposed of by him within a maximum period of three months from the date of the receipt thereof from the Tehsil Revenue Officer. Rule-18 lays down the procedure after sanction of nautor lands. According to sub-rule (2) of Rule-18, after the expiry of the period prescribed for filing an appeal/revision, the patta shall be issued under the seal and signature of the Collector of the District to whom it will be put up by the Tehsil Revenue Officer after due completion and after the execution of the Patta in Form "D" for purposes other than Horticulture and in Form "E" for Horticulture, the mutation memorandum in Form "B" shall be completed in the office of the Sub-Divisional Officer (Civil) and issued under his signatures to the Revenue Officer of the area concerned for entry and attestation of mutation. Rule-18 made the grantee bound by the conditions of patta. Rule-25 authorizes the Deputy Commissioner to pass orders as he deems fit after giving an opportunity to the person affected to be heard. Rule-28 provides that 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 and 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 and in 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 and no second appeal could lie when the original order is confirmed on first appeal.

10. Rule-29 deals with review. It reads as under:

"29. Review-The Financial Commissioner or the Commissioner or the Deputy Commissioner or the Sub-Divisional Officer (c) may either of his own motion or on application of any party interested review, and modify, reverse or confirm any order passed by himself or any of his predecessors in office, provided as follows:-

(a) When the Sub-Divisional Officer (C) thinks it necessary to review any order, he shall first obtain the sanction of the Deputy Commissioner;

(b) when the Commissioner or the Deputy Commissioner think it necessary to review any order which he has not himself passed, he shall first obtain the sanction of the Financial Commissioner in the case of the Commissioner and the Commissioner in the case of the Deputy Commissioner;

(c) the application for review of an order shall not be entertained unless it is made within 90 days from the passing of the order and unless the applicant

satisfied the Financial Commissioner or the Commissioner or the Deputy Commissioner or the Sub-Divisional Officer (Civil) as the case may be, that he had sufficient cause for not making the application within that period;

(d) an order shall not be modified or reversed in review unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;

(e) an order against which an appeal has been preferred shall not be reviewed."

11. Rule-30 lays down that 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 and the Commissioner may at any time call for the record of any case pending before or disposed of by any officer subordinate to him and if in any case, in which the Commissioner has called for the record and if order made should be modified or reversed, he shall report the case with his opinion thereon for the orders of the Financial Commissioner. 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. However, the authorities were required to hear the parties before reversing the order or modifying any proceedings or order of the Subordinate Revenue Officer.

12. In the instant case, the petitioner was Government employee at the time of allotment of Nautor land on 27.12.1989. He was granted land for the construction of a cow shed. Petitioner has mentioned his annual income as Rs. 4800/- from all sources. He has spent a sum of Rs. 80,000/- on the construction of the shops as per the orders passed by the Deputy Commissioner, Kinnaur on 05.06.1993. The Financial Commissioner (Appeals), Himachal Pradesh, Shimla vide order, dated 05.11.2003 has remanded the case back to the Sub-Divisional Officer (C) Nichar to inquire afresh into the matter and to submit a factual report to the District Collector, Kinnaur. The Sub-Divisional Officer (C) conducted the spot investigation on 20.01.2004. He recommended the cancellation of the Nautor land granted in favour of the petitioner vide Annexure P-4. Thereafter, on the recommendations made by the SDO (C), the Nautor land granted in favour of the petitioner was cancelled by the Deputy Commissioner, Kinnaur. Petitioner filed a revision petition before the Divisional Commissioner, Shimla, which was dismissed in default and an application for restoration of the same was also dismissed on 04.04.2011 vide Annexure P-5. Thereafter, the petitioner filed a revision petition against the order, dated 04.04.2011, before the Financial Commissioner (Appeals), Himachal Pradesh, Shimla-2. The Financial Commissioner (Appeals), H.P. dismissed the revision petition on 27.08.2013 by upholding the order, dated 04.04.2011, passed by the Divisional Commissioner, Shimla. The Financial Commissioner has given the reasons the manner in which the petitioner had applied for the grant of Nautor land by suppressing the material facts qua his income. He was also not even resident of the estate for which he had applied for the grant of Nautor land. Petitioner was a resident of Mohal Chagaon, whereas he applied for nautor land for the construction of a cow

shed in revenue estate Tapri. The petitioner has violated Rule-7 of the H.P. Nautor Rules, 1968. He has used the land for the purpose other than for which the land was sanctioned. He was sanctioned land, as noticed above, for the construction of cow shed, but he has constructed shops for commercial purpose. Petitioner could not apply for the grant of land since his income was more than Rs. 2000/- per annum, rather his income was Rs. 48,000/-, but he has given his income as Rs. 4800/- per annum. His case was rejected by the Divisional Commissioner on 04.04.2011. He filed the revision only on 22.12.2011 without explaining the delay.

13. Case of the petitioner is that the income criteria would not apply to him since he belongs to Scheduled Tribes category and his case would be covered under Clause (b) of Rule-7 of The Himachal Pradesh Nautor Land Rules, 1968. However, the fact of the matter is that the petitioner has suppressed the material facts at the time of submission of application for allotment of Nautor land. He has used the land for the purpose other than for which it was allotted by constructing shops for commercial use. He belongs to Mohal Chagaon, but he has applied for the land in revenue estate Tapri. The object of grant of Nautor land was to implement the policy of the Government to help certain persons who were either landless or in dire need of land for cultivation for their sustenance. Petitioner was Deputy Ranger employed in the Forest Department. His income was more than Rs. 2000/- per annum. He can not be held to be eligible even though he belongs to Scheduled Tribes category as per Sub-rule (b) of Rule-7 of The Himachal Pradesh Nautor Land Rules, 1968. Moreover, he has also violated the conditions of Patta executed between him and the State. Petitioner cannot be termed either landless or needy person for the purpose of allotment of Nautor land. The criteria of holding less than 10 bighas of land under his cultivation read with income criteria would apply to Scheduled Castes and Scheduled Tribes as well. Since objective of the Scheme was to help the needy and landless persons, the persons with more than 10 bighas of land and having income more than Rs. 2000/- per annum, cannot be presumed to be needy for whom Nautor land could be granted.

14. The Court has passed the following order on 27.12.2013:

"The issue which arises for consideration is as to whether a Government employee is entitled for allotment of land under the H.P. Nautor Land Rules, 1968. We direct respondent No. 4 to file response by his personal affidavit, disclosing the number of Government employees within the State, to whom the land stands allotted under the Rules. The response shall positively be filed within a period of three weeks and rejoinder within one week thereafter. List on 28.02.2014.

2. In the meanwhile, we direct the parties to maintain status quo, qua nature and possession of the land, which is subject matter of the present writ petition."

In sequel thereto, an affidavit, dated 19.02.2014, was filed by the Chief Secretary, Government of Himachal Pradesh. According to the averments made

in the affidavit, Nautor land was sanctioned/granted to 5532 Government employees including employees of Central Government and Defence/Army/Para Military Forces.

15. The Court passed the following order on 28.02.2014:

"Affidavit dated 19.2.2014 perused. Chief Secretary, Government of Himachal Pradesh is directed to furnish list of all the Officers presently serving the State Government, to whom, land stands allotted in terms of Nautor Policy. Needful be positively done within a period of two weeks.

List on 22.3.2014."

In sequel to order, dated 28.02.2014, the Chief Secretary, Government of Himachal Pradesh filed the affidavit, dated 22nd March, 2014. According to the averments made in the affidavit, dated 22nd March, 2014, the Deputy Commissioner Lahaul and Spiti has reported 237 more allotment cases of Government employees. Hence, the figure 5532 mentioned in earlier affidavit, dated 19.02.2014 was requested to be read as 5769.

16. The Court passed the following order on 28.04.2014:

"Affidavit dated 22nd March, 2014 is not in respect of order dated 27.12.2013. Mr. Anup Rattan, learned Additional Advocate General submits that order shall positively be complied with and affidavit disclosing the list of recipients of land under the policy, shall be filed within four weeks.

List on 29th May, 2014."

In sequel thereto, the Chief Secretary, Government of Himachal Pradesh filed an affidavit, dated 21.06.2014.

17. The Court passed the following order on 31.07.2014:

"For the reasons explained by Mr. B.S. Parmar, learned Additional Advocate General, personal appearance of Chief Secretary, State of Himachal Pradesh is exempted. He shall not appear unless so directed by us. On the request of Sh. Parmar, matter is adjourned by two weeks. List on 21.8.2014."

In sequel thereto, an affidavit was filed on 01.09.2014 and the information with regard to Deputy Commissioner, Lahaul and Spiti, Kinnaur and Chamba was given.

18. The Court passed the following order on 18.09.2014:

"The Himachal Pradesh Nautor Land Rules, 1968 came up for consideration before the Hon"ble Apex Court in Gopinder Singh Vs. The Forest Department of Himachal Pradesh and others, AIR 1991 SC 433 : (1990) 3 JT 561 : (1990) 2 SCALE 334 : (1990) 1 SCC 272 Supp : (1990) SCC 272 Supp : (1990) 3 SCR 797 : (1990) 2 UJ 564 . Respondent No. 4 is directed to file his personal affidavit, disclosing the names of all the applicants/Government officials, whether

in service or retired, to whom nautor land stands allotted in violation of the directions issued in Gopinder Singh (supra). At this point in time, we refrain from passing any order qua the allottees, whose names stand disclosed in terms of affidavit dated 01.09.2014. Needful be positively done within a period of four weeks. List on 30.10.2014."

Thereafter, affidavits, dated 25th November, 2014 and 6th January, 2015, were filed by the Chief Secretary, Government of Himachal Pradesh, whereby the details of Districts Una, Hamirpur, Kangra, Sirmaur and Bilaspur have been given. According to the details given vide Annexure R/4-1, no land was allotted in Districts Una, Hamirpur and Kangra under the provisions of Nautor Rules, 1968. The Deputy Commissioner, Sirmaur has informed that no land has been allotted in violation of the directions issued by the Hon"ble Apex Court vide judgment in Gopinder Singh Vs. The Forest Department of Himachal Pradesh and others, AIR 1991 SC 433 : (1990) 3 JT 561 : (1990) 2 SCALE 334 : (1990) 1 SCC 272 Supp : (1990) SCC 272 Supp : (1990) 3 SCR 797 : (1990) 2 UJ 564 . In District Bilaspur, 425 Government employees have been allotted Nautor land. It is clear from the details given that the applicants, though Government employees, have been allotted Nautor land, but they have not mentioned their income in the respective case files in all the 425 cases. It was a serious lapse on the part of the authorities, who have sanctioned the Nautor land in favour of the Government employees, who have not given their details of income. Thus, the allotment of Nautor land was made in violation of Sub-rule (a) of Rule-7 The Himachal Pradesh Nautor Land Rules, 1968. Similarly, in District Lahaul and Spiti, 537 Government employees have been granted Nautor land under the H.P. Nautor Rules, 1968. It is submitted that in all 537 cases, the allotments were made under Clause (b) of Rule-7 of The Himachal Pradesh Nautor Land Rules, 1968 as the whole Lahaul and Spiti District is tribal area. It is evident from the affidavit that the income of all the allottees in District Lahaul and Spiti was more than Rs. 2000/- per annum.

19. Now, we will advert to District Chamba. In District Chamba, 656 Government employees have been granted nautor land under The Himachal Pradesh Nautor Land Rules, 1968. It is evident from the details given therein that the income of all the Government employees was more than Rs. 2000/- per annum. Thus, they were not entitled to grant of Nautor land under The Himachal Pradesh Nautor Land Rules, 1968.

20. In District Mandi, 198 Government employees have been granted Nautor land under The Himachal Pradesh Nautor Land Rules, 1968. It is duly established from the details that the income of all the Government employees, who have been granted Nautor land was more than Rs. 2000/- per annum. The Government employees in most of the cases have not mentioned their income in the application forms. Thus, they were also not entitled to Nautor land under The Himachal Pradesh Nautor Land Rules, 1968.

21. In District Kinnaur, 534 Government employees have been granted Nautor

land under The Himachal Pradesh Nautor Land Rules, 1968. Even in these cases, income of few of the Government employees who have been granted Nautor land was even more than Rs. 2000/- per annum. What has to be seen, is the objective of the Scheme, which was to help the persons who were having less than 10 bighas of land and their income was less than Rs. 2000/- per annum and were also Scheduled Castes and Scheduled Tribes. Cases of those Scheduled Castes and Scheduled Tribes persons can be considered for grant of Nautor land, who are landless and are in need of land for the purpose of cultivation, construction of their houses, cow shed, any building subservient to agriculture, thrashing floor, water mill, water channel, consolidation of Holdings and for public purposes like construction of Dharamshala etc. The affluent persons, who were Government employees and whose income was more than Rs. 2000/- per annum and were already in possession of land, were not entitled to get the land under Sub-rule (b) of Rule-7 of The Himachal Pradesh Nautor Land Rules, 1968.

22. In District Shimla also, 848 Government employees have been granted Nautor land under The Himachal Pradesh Nautor Land Rules, 1968. They have shown their income more than Rs. 2000/- per annum, but still they have been granted Nautor land in contravention of The Himachal Pradesh Nautor Land Rules, 1968.

23. In District Kullu, 44 Government employees have been granted Nautor land under The Himachal Pradesh Nautor Land Rules, 1968. There is a standard pattern whereby the income has been shown less than Rs. 1900/- per annum. All the incumbents have made false declarations qua their income. Their income even at the time of allotment of Nautor land could not be less than Rs. 2000/- per annum, even if their salary is assumed to be less than Rs. 400/- per month.

24. State largess has been distributed without due application of mind to Government employees, who were not eligible for the grant of Nautor land and those who were landless, Scheduled Cast and Scheduled Tribes with meager income, have been left out.

25. In District Chamba, 13 Government employees have been granted Nautor land whose income was more than Rs. 2000/- per annum, in violation of the directions issued by the Hon"ble Apex Court in *Gopinder Singh Vs. The Forest Department of Himachal Pradesh and others*, AIR 1991 SC 433 : (1990) 3 JT 561 : (1990) 2 SCALE 334 : (1990) 1 SCC 272 Supp : (1990) SCC 272 Supp : (1990) 3 SCR 797 : (1990) 2 UJ 564 . In District Mandi, after the judgment rendered by the Hon"ble Apex Court on 17.08.1990, 180 Government employees have been granted Nautor land whose income was more than Rs. 2000/- per annum. In District Shimla, 12 Government employees have been granted Nautor land, though their income was more than Rs. 2000/- per annum, in violation of the judgment rendered by the Hon"ble Apex Court on 17.08.1990. In District Solan, two Government employees have been granted Nautor land, though their income was more than Rs. 2000/- per annum, in violation of the judgment rendered by the Hon"ble Apex Court on 17.08.1990. The state has undertaken to

issue notices to those 207 allottees as per the affidavit dated 8th April, 2015.

26. The details discussed hereinabove make a startling revelation the manner in which the land has been allotted to the Government employees, who were not entitled to the same under The Himachal Pradesh Nautor Land Rules, 1968. The Government land can be allotted only for the purposes of Horticulture, Agriculture, construction of any building subservient to agriculture, thrashing color, water mill, water channel, construction of a building for resident, consolidation of holdings and for public purposes like construction of Dharamshala etc. The maximum limit has been prescribed under Rule-6. The grant of Nautor land could be cancelled as per Rule 12 on the grounds if the grantee secured the sanction of nautor land by suppression of material facts in his nautor application. According to Rule-7, a person could only submit his application for the grant of Nautor land in the Mohal where he permanently resides. In the instant case, all the Government employees have violated Rule-7(a) or (b) and they have suppressed the material facts at the time of submission of their applications under Rule-13. Under Rule-25, the Deputy Commissioner could resume the possession. Thereafter, the same is required to be taken back by the Tehsil Revenue Officer. Rule-29 deals with review. The Financial Commissioner or the Commissioner or the Deputy Commissioner or the Sub-Divisional Officer (C) may either of his own motion or on application of any party interested review, modify, reverse or confirm any order passed by himself or any of his predecessors-in-office on the conditions stipulated therein. We have already discussed the scope of Rule-30 which deals with the revision. 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, however, provided that before exercising this power, the parties concerned are to be heard inconformity with the principles of natural justice.

27. The Nautor Rules have all the ingredients of law. According to Form (c) prescribed under Rule-13 of The Himachal Pradesh Nautor Land Rules, 1968, the applicant has to disclose the income criteria accruing to the applicant from all sources. It has to be in the shape of an affidavit.

28. Mr. P.M. Negi, learned Deputy Advocate General submitted that the power of review and revision has to be exercised within a reasonable period. We are of the considered opinion that a revision would lie within three years from the date of detection of fraud. In the instant case, nobody knew about the large scale scam the manner in which the Nautor land has been granted to the Government employees in violation of The Himachal Pradesh Nautor Land Rules, 1968. It is only by way of the affidavits filed during the course of proceedings that the Court has noticed that the land has been obtained under The Himachal Pradesh Nautor Land Rules, 1968 by concealing the material facts qua income. Fraud vitiates every action. It is the duty of all the statutory functionaries to protect, preserve and safeguard the State property. It cannot be distributed in an indiscriminate manner. The order of grant of land can be reviewed or revised after grant of

patta as laid down by this Court in Percy Chauhan Vs. State and Another, (1979) 8 ILR HP 35 .

29. Their Lordships of the Hon"ble Supreme Court in S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others, AIR 1963 SC 1356 : (1963) 49 ITR 1 : (1964) 1 SCR 29 have held that the words "any time" means that the action to be taken without any limit of time. Their Lordships have held as under:

"69. The next requirement of S. 4 of the Act of 1959 is that the notice must have been issued at any time before the commencement of that Act. The present notice which had been issued in 1954 had clearly been so issued. When the section uses the words "at any time", I suppose it means at any time; it does not thereby say that the notice must be issued at any time before the 1959 Act but after a certain other point of time. The other limit is not to be found in the section at all; all that it requires is that the notice must be issued before the 1959 Act.

In the instant case, the expression "at any time" mentioned in The Himachal Pradesh Nautor Land Rules, 1968 has to be read taking into consideration the objectives of these Rules.

30. The Full Bench of this Court in Mangheru etc. Vs. The State of Himachal Pradesh and Others etc., AIR 1982 HP 1 : (1981) ShimLC 431 has held that Article 56 of the Limitation Act lays down a limitation of three years from the date of the knowledge of fraud and the Court was of the opinion that it would be reasonable to lay down that ordinarily within a period of three years from the date of knowledge of fraud the suo motu powers can be exercised. Their Lordships have further held that arbitration clause cannot take away the suo motu powers of review and revision granted to various authorities. Their Lordships have held as under:

"20. Now, there is no dispute that the peculiar facts and circumstances of each case should determine "a reasonable time". For example, if a grantee has suppressed material facts or has obtained the allotment by playing a fraud or a deception "the reasonable time" will have to be determined with reference to the time when the fraud or deception came to light. Various cases where a party had concealed material facts and succeeded in obtaining the allotment have come to our notice. We cannot allow a party to reap the fruits of his deception or fraud simply on the ground that it had successfully kept them concealed over a sufficiently long period of time. However, once the fraud is uncovered, then action is required to be taken within a reasonable time thereafter. Article 56 of the Limitation Act lays down a limitation of three years from the date of the knowledge of fraud, and we are of the opinion that it will be reasonable to lay down that ordinarily within a period of three years from the date of knowledge of fraud the suo motu powers can be exercised.

23. It will be noticed that only where the differences have arisen "in any way

touching or concerning this grant....." the matter shall be referred to arbitration. If the differences are arising in respect of "this grant" then the matter has to be referred to the arbitration. This intention is clear also from the use of the words: "save in so far as the decision of any such matter has been hereinbefore provided for....." Moreover, rule 19 unambiguously provides that the conditions of the patta are to be enforced subject to the provisions of the rules. Since rules 29 and 30 provide for *sou motu* review and revision, this power could not be taken away by the arbitration clause. It has to be remembered that in the scheme of things, the patta may be granted at a very early stage and the aggrieved persons may be filing the appeals etc. in terms of rule 28. An application for review can also be made under Clause ? of rule 29. It cannot be held that the moment the patta is granted the rights of other persons to file appeals and applications for review are automatically taken away. Indeed they are not parties to the patta and they cannot be held bound by the arbitration clause. The arbitration clause cannot also take away the *sou motu* powers of review and revision granted to various authorities. We may at this stage also record that this arbitration clause has since been deleted by a gazette notification dated 21st September, 1974."

31. Their Lordships of the Hon"ble Supreme Court in *Kanshi Ram and Another Vs. Lachhman (Dead) through Lrs. and Others*, AIR 2001 SC 2393 : (2001) 5 JT 324 : (2001) 4 SCALE 253 : (2001) 5 SCC 546 : (2001) 3 SCR 803 : (2001) AIRSCW 2478 : (2001) 5 Supreme 9 have held that the use of expression "at any time" for making an application or filing a suit is indicative of the legislative intent that the Act provides a fresh opportunity to the debtor for getting relief under the Act. The legislature has taken care to make the relevant provisions of the Act granting relief to debtors by giving overriding effect over any law, agreement, contract or decree contrary to the provisions of the Act. Their Lordships have held as under:

"15. The object of the Act and the scheme underlying it as obtained from the provisions made therein is to grant relief to debtors and enable them to get back properties mortgaged by them with possession for a loan. The use of expression "at any time" for making an application or filing a suit is indicative of the legislative intent that the Act provides a fresh opportunity to the debtor for getting relief under the Act. The legislature has taken care to make the relevant provisions of the Act granting relief to debtors by giving overriding effect over any law, agreement, contract or decree contrary to the provisions of the Act. It was not disputed before us during hearing of the case that the plaintiffs filed the suit under provisions of the Act for restoration of the possession of the mortgaged property. Undisputedly there is no decree for foreclosure in favour of the creditor/mortgagee.

16. In the backdrop of the above the question of limitation is to be considered. The reason given by the High Court in support of the finding that the suit was barred by limitation is that more than 30 years had elapsed since the date of the

mortgage (February, 1946) when the suit was filed in 1981. Therefore the mortgagor had lost his right to redeem the property mortgaged. The provisions in Section 27 of the Limitation Act have been considered in support of the finding. This reasoning appears to us to be fallacious. It defeats the object and the purpose of the statute enacted by the legislature specially to give relief to debtors in the State. The first appellate Court had given cogent reasons in support of its finding in favour of the appellants. The Court held and in our view, rightly that the suit was one for recovery of possession from the mortgagee who was in unauthorised possession of the mortgaged property after the mortgage loan was satisfied. The cause of action for filing such a suit under the Act arose when the enactment was enforced in 1979. Viewed from that angle the suit was filed in time and the trial Court and the first appellate Court rightly recorded the findings to that effect. The High Court erred in reversing the concurrent finding of the Courts below on the erroneous assumption that the suit was one for redemption of the mortgage simpliciter. It is relevant to note here that the present suit is not one filed under Section 60 or 62 of the Transfer of Property Act. It is a suit filed for relief on the basis of the Himachal Pradesh Debt Reduction Act, 1976."

32. Their Lordships of the Hon"ble Supreme Court in *Gopinder Singh Vs. The Forest Department of Himachal Pradesh and others*, AIR 1991 SC 433 : (1990) 3 JT 561 : (1990) 2 SCALE 334 : (1990) 1 SCC 272 Supp : (1990) SCC 272 Supp : (1990) 3 SCR 797 : (1990) 2 UJ 564 have held as under:

"6. We have carefully examined the provisions of clause (a) of R. 7 reproduced above. The clause reads "such persons who have less than 10 bighas of land.... or have an income of less than 2,000 per annum from all sources including lands". There is thus inherent evidence in the clause itself to show that the two parts cannot be read disjunctively. The second part makes it clear that an income of less than Rs. 2,000/- per annum should be from all sources including lands. It is thus obvious that a person who has got less than 10 bighas of land but has an income of more than Rs. 2,000/- from the said land is not eligible for allotment of nautor land under clause (a). Even otherwise if we interpret the clause the way learned counsel for the appellant wants us to do it would produce absurd result. A person having two bighas of land but otherwise earning Rs. 20,000/- per annum would be eligible for allotment of nautor land if we accept the appellant's interpretation. The object of granting nautor land under the rules is to help poor and unprovided for residents of Himachal Pradesh. Considering the nature, scope and the clear intention of the framers of the Rules it is necessary to read the word "or" in between the first and the second part of clause (a) as "and". The appellant's income was admittedly more than Rs. 2,000/- per annum and as such his claim for nautor land was rightly rejected.

33. Mr. P.M. Negi, learned Deputy Advocate General submitted that since the judgment in *Gopinder Singh's* case (supra) was delivered by the Hon"ble Supreme Court on 17.08.1990, therefore, the Nautor land allotted to the

Government employees before this date may not be disturbed. In other words, his submission is that the judgment rendered in Gopinder Singh's case would apply prospectively. Their Lordships of the Hon'ble Supreme Court in Gopinder Singh's case (supra) have categorically laid down that the two parts, i.e., such persons who have less than 10 bighas of land or have an income of less than Rs. 2000/- per annum from all sources including lands, cannot be read disjunctively. The second part makes it clear that an income of less than Rs. 2000/- per annum should be from all sources including lands. It is thus obvious that a person who has got less than 10 bighas of land but has an income of more than Rs. 2000/- from the said land was not eligible for allotment of nautor land under Clause (a). The object of granting nautor land under the rules is to help poor and unprovided for residents of Himachal Pradesh. We are also of the considered view that the scope and clear intention of framing of the Rules is required to be looked into while interpreting all the clauses of The Himachal Pradesh Nautor Land Rules, 1968. The judgment would also cover the previous cases where land has been illegally granted to those employees whose income was more than Rs. 2000/- per annum from all the sources, even if their land holding was less than 10 bighas.

Thus, there is no merit in the contention of Mr. P.M. Negi, learned Deputy Advocate General that the cases before and after 17.08.1990 be treated differently.

34. Their Lordships of the Hon'ble Supreme Court in Ibrahimpatnam Taluk Vyavasaya Collie Sangham Vs. K. Suresh Reddy and Others, AIR 2003 SC 3592 : (2004) 6 JT 70 : (2003) 6 SCALE 615 : (2003) 7 SCC 667 : (2003) 2 SCR 698 Supp have laid down that expression "at any time" for exercising of the power by the Collector under revision in case of fraud can be exercised within a reasonable time from the date of detection of the fraud. Their Lordships have held as under:

"12. The learned Single Judge has referred to and relied on various decisions including the decisions of this Court as to how the use of the words "at any time" in sub-section (4) of Section 50-B of the Act should be understood. In the impugned order the Division Bench of the High Court approves and affirms the decision of the learned Single Judge. Where a statute provides any suo motu power of revision without prescribing any period of limitation, the power must be exercised within a reasonable time and what is "reasonable time" has to be determined on the facts of each case.

13. In the light of what is stated above, we are of the view that the Division Bench of the High Court was right in affirming the view of the learned Single Judge of the High Court that the suo motu power under sub-section (4) of Section 50-B of the Act is to be exercised within a reasonable time.

35. Their Lordships of the Hon'ble Supreme Court in Dr. Saurabh Choudhary and Others Vs. Union of India (UOI) and Others, AIR 2004 SC 2212 : (2004) 1 JT 578 Supp : (2004) 5 SCC 618 : (2004) 2 SCR 611 Supp : (2004) AIRSCW 2844 :

(2004) 4 Supreme 292 have held that by reason of a judgment, a law is declared. Declaration of such law may affect the rights of the parties retrospectively. Prospective application of a judgment by the Court must, therefore, be expressly stated. Their Lordships have held as under:

"20. By reason of a judgment, as is well known, a law is declared. Declaration of such law may affect the rights of the parties retrospectively. Prospective application of a judgment by the Court must, therefore, be expressly stated. The order dated 1.5.2003 furthermore is a pointer to the fact that this Court refused to interfere at that stage having regard to the fact that the admission of the students had already taken place. Despite the same, such admissions were made subject to the result of the writ petition. The parties, therefore, could not have any doubt as regards the fact that the judgment will be implemented in relation to the students who were to take admission in 2004 and onwards. The students appearing at the All-India Entrance Examination held by AIIMS or by the State Government or the universities, presumably were aware of the said fact."

In the instant case, it cannot be gathered from the judgment in *Gopinder Singh's* case (*supra*) that it was to apply prospectively. Thus, it would also cover the cases of those persons who have been allotted land before the date of judgment, i.e., 17.08.1990.

36. Their Lordships of the Hon^{ble} Supreme Court in *M.A. Murthy Vs. State of Karnataka and Others*, AIR 2003 SC 3821 : (2003) 185 CTR 194 : (2003) 264 ITR 1 : (2003) 8 JT 292 : (2003) 7 SCALE 154 : (2003) 7 SCC 517 : (2003) SCC(L&S) 1076 : (2003) 3 SCR 327 Supp : (2004) 1 SLJ 241 : (2004) 1 UJ 381 : (2003) AIRSCW 4377 : (2003) 6 Supreme 424 have held that normally, the decision of the Supreme Court enunciating a principle of law is applicable to all cases irrespective of stage of pendency thereof because it is assumed that what is enunciated by the Supreme Court. There is, in fact, the law from inception. Their Lordships have held as under:

"8. Learned counsel for the appellant submitted that the approach of the High Court is erroneous as the law declared by this Court is presumed to be the law at all times. Normally, the decision of this Court enunciating a principle of law is applicable to all cases irrespective its stage of pendency because it is assumed that what is enunciated by the Supreme Court is, in fact, the law from inception. The doctrine of prospective overruling which is a feature of American jurisprudence is an exception to the normal principle of law, was imported and applied for the first time in *I.C. Golak Nath and Others Vs. State of Punjab and Another*, AIR 1967 SC 1643 : (1967) 2 SCR 762 . In *Managing Director, Electronic Corporation of India Vs. B. Karunakar*, (1992) 65 FLR 185 : (1992) 3 JT 605 : (1993) 3 SCALE 952 : (1992) 1 SCC 709 the view was adopted. Prospective overruling is a part of the principles of constitutional canon of interpretation and can be resorted to by this Court while superseding law declared by it earlier. It is a device innovated to avoid reopening of settled issues, to prevent multiplicity of proceedings, and to avoid uncertainty and

avoidable litigation. In other words, actions taken contrary to the law declared prior to the date of declaration are validated in larger public interest. The law as declared applies to future cases. (See Ashok Kumar Gupta and Another Vs. State of U.P. and Others, (1997) 4 JT 251 : (1997) 3 SCALE 289 : (1997) 3 SCALE 288 : (1997) 5 SCC 201 : (1997) SCC(L&S) 1299 : (1997) 3 SCR 269 , Baburam Vs. C.C. Jacob and Others, AIR 1999 SC 1845 : (1999) 82 FLR 90 : (1999) 2 JT 256 : (1999) 2 LLJ 983 : (1999) 2 SCALE 122 : (1999) 3 SCC 362 : (1999) SCC(L&S) 682 : (1999) AIRSCW 1447 : (1999) 3 Supreme 129 . It is for this Court to indicate as to whether the decision in question will operate prospectively. In other words, there shall be no prospective overruling, unless it is so indicated in the particular decision. It is not open to be held that the decision in a particular case will be prospective in its application by application of the doctrine of prospective overruling. The doctrine of binding precedent helps in promoting certainty and consistency in judicial decisions and enables an organic development of the law besides providing assurance to the individual as to the consequences of transactions forming part of the daily affairs. That being the position, the High Court was in error by holding that the judgment which operated on the date of selection was operative and not the review judgment in Ashok Kumar Sharma's case No. II. All the more so when the subsequent judgment is by way of Review of the first judgment in which case there are no judgments at all and the subsequent judgment rendered on review petitions is the one and only judgment rendered, effectively and for all purposes, the earlier decision having been erased by countenancing the review applications. The impugned judgments of the High Court are, therefore, set aside.

37. Accordingly, the writ petition is dismissed, however, in larger public interest, the following mandatory directions are issued to the State Government:

1. The Financial Commissioner (Appeals) is directed to call for the records of 5769 cases in which the Government employees have been granted Nautor land under The Himachal Pradesh Nautor Land Rules, 1968, whose income was more than Rs. 2000/- per annum at the time of submission of application(s). It is made clear by way of abundant precaution that the records of all the cases shall be called whether the land has been allotted under The Himachal Pradesh Nautor Land Rules, 1968 before or after 17.08.1990.
2. The Financial Commissioner (Appeals) shall decide all the revisions within a period of one year from today after hearing the parties and shall pass detailed/speaking orders in all the cases in which grant of Nautor land was found to be in violation of The Himachal Pradesh Nautor Land Rules, 1968. Thereafter, the possession shall be resumed within a period of eight weeks after resumption/cancellation of the grant of Nautor land to allottees.
3. If the Financial Commissioner comes to the conclusion that the Nautor land has been granted for horticulture, agriculture, construction of any building subservient to agriculture, thrashing floor, water mill, water channel, construction of a building for residence, consolidation of holdings and for public purposes like

construction of Dharamsala etc. in violation of The Himachal Pradesh Nautor Land Rules, 1968, the same shall vest in the State of Himachal Pradesh free from all encumbrances and these persons shall not be entitled to any compensation.

4. Since the Financial Commissioner (Appeals) has to deal with 5769 cases, the respondent-State is directed to appoint/post, two more Financial Commissioner (Appeals) to hear the revisions, within a period of six weeks from today.

5. It is made clear that in all the cases where the land has been allotted/granted to the Government employees in breach of The Himachal Pradesh Nautor Land Rules, 1968 and the same has been acquired under the Land Acquisition Act, in those cases also, the amount received by the allottees/grantees shall be refunded to the State Government with interest @9% per annum.

38. The miscellaneous application(s), if any, also stand(s), disposed of.