
(1994) 10 SHI CK 0019
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 97 of 1984

Nathu Ram and Others

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 25-10-1994

Acts Referred:

Citation : (1994) ShimLC 220 Supp

Hon'ble Judges : G.C. Gupta, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Vijay Thakur, for the Appellant; M.L. Chauhan, Assistant A.G. for Respondent Nos. 1 and 2 and M.L. Sharma, for the Respondent

Final Decision : Allowed

Judgement

Gulab C. Gupta, C.J.—Petitioner's mother Smt. Sundru had applied for and granted 5-8-17 bighas of Nautor land bearing khasra No. 42, Mauza Darwar, Tehsil Sarkaghat, District Mandi, in the year 1971. Pursuance to the same, a Patta for the aforesaid land was also issued in her favour on 26-6-1973 as per Annexure PA. The said Patta has been cancelled because of objection(s) from Respondent No. 3 By an order dated 8-2-1984 (Annexure PB) passed by the Respondent Divisional Commissioner. The Petitioners felt aggrieved by the same and have preferred this writ petition challenging the legal and constitutional validity thereof.

2. There is no dispute at this stage that Nautor Land mentioned above was granted in favour of Petitioners' mother on 22-5-1971 and a Patta in respect thereof was also given to her as per Annexure PA. Respondent-3 had filed an appeal against the said grant in August 1981 before the Assistant Deputy Commissioner (A.D.C.) Mandi. The grievance of the Respondent No. 3, in particular was, that he was in possession of a part of the said land since time immemorial and hence had himself become entitled to the grant. He, therefore, submitted that the Petitioners mother could not have been granted the Patta. It appears that the Petitioner's mother had died some time in 1975, i.e before the

filing of the appeal by Respondent No. 3 The Respondent A.D.C. while considering the appeal did not consider it proper to give any notice to the Petitioners who are the legal heirs and in possession of the land in question. The said A.D.C., however, on enquiry, found that Respondent No. 3 was in possession of a portion of the land and hence Patta thereof could not be granted to the Petitioners' mother However, that part of the land which was found to be in possession of Respondent No. 3 was directed to be excluded from the grant. Respondent No. 3 was not satisfied with the aforesaid and took the matter to the Respondent- Divisional Commissioner. The Respondent-Divisional Commissioner, however, made the Petitioners parties to the said case and after hearing them passed the impugned order. The learned Divisional Commissioner held that Petitioner Nathu Ram, the son of the deceased grantee owns about 30/35 Bighas of land and hence he was not entitled to get the Nautor land. He, therefore, ordered that allotment of Nautor to Smt. Sundru be resumed by the Government. It is this order which is under challenge in this writ petition.

3. The Respondents in their reply did not dispute that the grant was made in favour of the Petitioners' mother on 22-5-1971 but the appeal against the said grant was filed in August, 1981. Under the then existing Rules relating to the grant of Nautor land, an appeal against the order granting Nautor Land could be filed within a period of sixty days No doubt, the appellate authority had the jurisdiction to condone the delay. The order passed by the A.D.C. on 27-8-1981, however, indicates that the power to condone delay in filing the appeal was not exercised. The learned Counsel for Respondent No. 3, however, submitted that the order condoning the delay may be in another file. Be that as it may, the fact remains that the appeal was filed after a lapse of little over ten years and could not have normally been entertained. Respondent No. 3 does not claim possession over khasra No 42 and could not have been effected by the grant. Then there was no justification for the A.D.C. to consider the possession of Respondent No. 3 without giving notice to the Petitioners who are admittedly the legal representatives of the original grantee. Clearly, therefore, the order passed by the A.D.C. would not bind the Petitioners and would not be sufficient to affect them adversely.

4. As regards the order of Respondent-Divisional Commissioner, it cancels the grant in favour of Smt Sundru only because her son, after her death is possessed of 30/35 Bighas of land. May be Petitioner Nathu Ram is not entitled to the grant of Nautor at the present but this fact by itself would not be enough to cancel the grant in favour of late Smt, Sundru, What was required to be considered is whether the grant of Nautor made in favour of late Smt, Sundru on 22-5-1971 was in any way illegal. If at that time her son was possessed of 30/35 Bighas of land and constituted a family with her the question of cancellation of grant made have arisen. There is, however, no such findings. Apparently, therefore, the grant in favour of Smt, Sundru has been cancelled illegally. In this view of the matter, the impugned order of the Respondent Divisional Commissioner, cannot be sustained.

5. Learned Counsel for Respondent No. 3, however, submitted that the land granted in favour of the Petitioners' mother was in his occupation since long. On being requested to show whether the statement was true, learned Counsel for Respondent No, 3 failed to point out that the land in possession of the said Respondent was land of khasra No. 42. Indeed, the order of the A.D.C. dated 27-8-1981, places the matter beyond doubt by establishing that the land allegedly in possession of this Respondent is not the land of khasra No. 42. There is, therefore, no conflict of interest between the Petitioners and Respondent No. 3. Respondent No 3 can pursue the remedies available to him in relation to the lands in his possession. For this reason it is not considered necessary to remand the matter for fresh consideration of the authorities.

6. The petition succeeds and is allowed. The impugned order of the Respondent-Divisional Commissioner Annexure PB, cancelling the grant and Patta in favour of Smt. Sundru is hereby quashed. No costs.