

(2023) 04 SHI CK 0017

In the High Court Of Himachal Pradesh

Case No : Latter Patent Appeals No. 196 Of 2016

Pankaj Kumar

APPELLANT

Vs

Financial Commissioner (Appeals), State Of Himachal Pradesh

RESPONDENT

Date of Decision : 04-04-2023

Acts Referred:

Himachal Pradesh Nautor Land Rules, 1968 — Rule 14, 15, 16, 28, 30

Citation : (2023) 04 SHI CK 0017

Hon'ble Judges : Sabina, J; Satyen Vaidya, J

Bench : Division Bench

Advocate : G.R. Palsara, Arsh Rattan, Sanjeev Kuthiala, Amrita Chandel

Final Decision : Allowed

Judgement

Sabina, J

1. Appellant has filed the Letters Patent Appeal challenging the order dated 9th September, 2016, passed by the learned Single Judge, whereby writ petition filed by respondents No. 4 and 5 was allowed.

2. Learned counsel for the appellant has submitted that the learned Single Judge has erred in allowing the writ petition filed by respondents No. 4 and 5. In fact, the Divisional Commissioner had rightly exercised the power of revision conferred under Rule 30 of the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter referred to as "the Rules", for short). As per Rule 28 of the Rules, second appeal was not maintainable, whereas, inadvertently, appellant had filed second appeal before the Divisional Commissioner. The Divisional Commissioner rightly exercised the powers vested in it under Rule 30 and had made reference to the Financial Commissioner (Appeals).

3. Mr. Sanjeev Kuthiala, learned Senior Counsel, for respondents No. 4 and 5 has opposed the appeal and has submitted that the learned Single Judge has rightly observed that the Commissioner could not convert the appeal into revision as there was no such power vesting with him under the Rules.

4. Gosain Ram, predecessor-in-interest of respondents No. 4 and 5 had applied for grant of Nautor land in the year 1960 and the same was sanctioned in his favour vide order dated 10.01.1975. Objections were filed by one Tawaira against the said sanction and the Financial Commissioner (Appeals) vide order dated 07.08.1992, set aside the grant of land bearing khasra Nos.1653/1618/1467/1 measuring 4-3-10 bighas in favour of Gosain Ram. It was ordered that the Deputy Commissioner, Mandi/Sub-Divisional Officer Chachiyot should give alternative land in Nautor to Gosain Ram available in the vicinity or elsewhere in the State. Thereafter, alternative land was allotted to respondents No. 4 and 5 and mutation was sanctioned in their favour with regard to the land bearing 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 Chachiyot, District Mandi, HP. Names of respondents No. 4 and 5 were duly reflected in the Jamabandi for the year 2000-2001 as owner in possession of the land allotted to them.

5. Appellant filed an appeal under Rule 28 of the Rules before the Deputy Commissioner, Mandi in the year 2006 and the Deputy Commissioner, Mandi dismissed the appeal filed by the appellant vide order dated 27.11.2006 on the ground that the same was hopelessly barred by limitation. Thereafter, appellant preferred an appeal before the next Appellate Authority as per Rule 28, i.e., The Divisional Commissioner, Mandi. The appeal filed by the appellant was treated as a revision and was referred to Financial Commissioner (Appeals), HP by the Divisional Commissioner, Mandi vide order dated 23.07.2009. The operative part of the order dated 23.7.2009 reads as under:

"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."

6. Financial Commissioner (Appeals), vide order dated 04.05.2010, agreed with the recommendation made by the Divisional Commissioner, Mandi and set aside the order passed by the Deputy Commissioner, Mandi dated 27.11.2006 as well as order passed by the Sub Divisional Officer (Civil), Chachiyot, sanctioning the grant of Nautor land. It was observed by the Financial Commissioner (Appeals) that the original applicant Gosain Ram had not got 'No Objection Certificate' from the Forest and Public Works Department as per the Nautor Rules. The case was remanded to Sub- Divisional Officer (Civil) for deciding it afresh, after following proper procedure as laid down in Nautor Rules.

7. Aggrieved against the order passed by the Financial Commissioner (Appeals), respondents No. 4 and 5 preferred the writ petition before this Court. Learned Single Judge, vide impugned order dated 09.09.2016, allowed the writ petition

filed by respondents No. 4 and 5 and remanded the case to the Divisional Commissioner, Mandi for deciding the appeal filed by the appellant afresh in accordance with law.

8. Rules 28 and 30 of the Rules, read as under:-

"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.

29xxxxxx xxxxxx xxxxxx

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."

9. Thus, as per Rule 28, an appeal from the order passed by the Sub Divisional Officer (Civil) under Rule 16 would lie before the Deputy Commissioner. In case, the first order is passed by the Deputy Commissioner, then the appeal would lie to the Divisional Commissioner and second appeal would lie to the Financial Commissioner (Appeals). However, as per proviso, no second appeal would lie when the original order had been confirmed on first appeal.

10. In the present case, the order passed by the Sub Divisional Officer (Civil) had been confirmed by the Deputy Commissioner in appeal filed by the appellant. Thus, as per Rule 28, appellant could not have preferred second appeal before the Divisional Commissioner as the order passed by the Sub Divisional Officer (Civil) had been upheld by the Deputy Commissioner in appeal. However, the Divisional Commissioner could exercise power of Revision under Rule 30. The

Divisional Commissioner, thus, while hearing the appeal preferred before it by the appellant converted itself to a Court of Revision and in terms of Rule 30 made a recommendation to the Financial Commissioner (Appeals). The Divisional Commissioner under Rule 30 of the Rules could have recommended the case to the Financial Commissioner (Appeals). The recommendation made by the Commissioner vide order dated 23.07.2009 was accepted by the Financial Commissioner (appeals) vide order dated 04.05.2010.

11. It is not a case where the Divisional Commissioner had no power of revision. Had it been a case where the Divisional Commissioner had no power of revision, then the order passed by the Divisional Commission dated 23.07.2009 was liable to be set aside but as the power was vested in the Divisional Commissioner under Rule 30 of the Rules, he exercised his power of revision while making recommendation to the Financial Commissioner (Appeals). Appellant could have filed revision under Rule 30 of the Rules but had erroneously filed appeal under Rule 28 of the Rules. Although, the appellant had filed second appeal before the Divisional Commissioner and the same was not maintainable but the Divisional Commissioner had the power of revision under Rule 30 and chose to exercise the said power. Hence, we are of the considered opinion that the learned Single Judge fell in error in holding that the Divisional Commissioner could not have converted the appeal into a revision. The Divisional Commissioner had the inherent power to treat the appeal under Rule 28 as a revision under Rule 30 of the Rules while exercising jurisdiction vested in it under Rule 30 of the Rules. Hence, the learned Single Judge fell in error in setting aside the order dated 23.7.2009, passed by the Divisional Commissioner.

12. The next question that arises for consideration is as to whether the order dated 4.5.2010, passed by the Financial Commissioner (Appeals) is legally sustainable? The operative part of the order dated 4.5.2010, reads as under:

"6. I have perused the written arguments submitted by both the parties and considered the arguments advanced by the learned District Attorney Mandi for the State of the HP. The record of the lower courts have also been perused. The order passed by the Sub-Divisional Officer (Civil), Chachiyot at Gohar sanctioning alternate nautor land to the legal heir of Shri Gosain, the original applicant, in compliance of the orders of this court, have also been perused from which it is revealed that before sanctioning the aforesaid land, the required 'no objection certificate' from the Forest and Public Works Departments have not been obtained as envisaged under Rules 14 and 15 of the Nautor Rules. The record also shows that the mutation no. 589 for the aforesaid land has also been sanctioned on 5.8.2000 without sanctioning the 'patta' for the above nautor land and also without issuing mutation memorandum in Form B as envisaged under the aforesaid Rules. The order of the Sub Divisional Officer (Civil) also bears cuttings and correction using fluid which also cause suspicion. Besides this order also does not show the date on which it has been passed. It appears that this sanction order has been passed in a hasty manner without adopting the

prescribed procedure as laid down in the Nautor Rules. It has been sanctioned merely on the reports of the Revenue field agency without considering the objections of the concerned Gram Panchayat as well as the estate right holders who have objected to the grant. It is also observed that the allotment has been made in eight small plots. The Deputy Commissioner has also failed to appreciate the above facts in appeal before him and has based his findings primarily on limitation without going into the infirmities committed by the Sub-Divisional Officer (Civil) in sanctioning the nautor land.

"7. In view of the above reasons, I agree with the recommendation of the Commissioner, Mandi division. The order passed by the Deputy Commissioner, Mandi dated 27.11.2006 passed in file no. 2 of 2006 and the order of the Sub-Divisional Officer (Civil), Chachiyot at Gohar sanctioning grant of nautor land are set aside. The case is remanded to the Sub-Divisional Officer (Civil) to decide the case afresh in the light of observation made above and also after following the proper procedure as laid down in Nautor Rules."

13. Thus, a perusal of the above order reveals that the Financial Commissioner (Appeals), after going through the record, came to the conclusion that the order had been passed by the Sub Divisional Officer (Civil) in a haste and without adopting the prescribed procedure as laid down under the Rules. The objections filed by the Gram Panchayat as well as the estate right holders had not been considered. The appeal filed by the appellant had been dismissed by the Deputy Commissioner merely on the ground of limitation, without going into the merits of the case. The Financial Commissioner (Appeals) has remanded the case to the Sub Divisional officer to decide the same afresh, in accordance with law. Hence, we do not find any error in the order passed by the learned Financial Commissioner (Appeals). Parties would be free to take up all the pleas available to them before the Sub Divisional Officer (Civil).

14. Accordingly, the Letters Patent Appeal is allowed. The impugned order dated 09.09.2016, passed by the learned Single Judge is set aside. Consequently, the writ petition filed by respondents No. 4 and 5 is dismissed.