
(2010) 09 SHI CK 0158
In the High Court Of Himachal Pradesh

Piar Singh and Others

APPELLANT

Vs

State of H.P and Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100
Nautor Rules, 1968 — Rule 27, 28, 30
Transfer of Property Act, 1882 — Section 27, 51

Citation : (2010) 3 ShimLC 425

Hon'ble Judges : Deepak Gupta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Deepak Gupta, J.—This appeal u/s 100 CPC is directed against the Judgment and decree dated 9.5.2000 passed by the learned District Judge whereby he dismissed the appeal of the appellants (here-in-after referred to as the plaintiffs) and upheld the Judgment and decree of the Sub Judge 1st Class, Ghumarwin dated 31.1.1992 dismissing the suit of the plaintiffs.

2. The undisputed facts are that Shri Piar Singh, appellant was working as Kanungo in the office of the Deputy Commissioner, Bilaspur. He was owner of land measuring 3.15 bighas comprised in Khasra No. 1145/1. He applied for exchange of this land with Government land comprised in Khasra No. 838 measuring 3.15 bighas situated in the same village. From the file it is apparent that he moved this application on 17.1.1985 before the Deputy Commissioner, Bilaspur. On that very date the Deputy Commissioner, Bilaspur with great alacrity sent the file to the office of the Field Kanungo of the circle and on the same day i.e. 17.1.1985 itself the file was returned to the office of the Deputy Commissioner with a report supporting the case of the appellant and vide order dated 29.8.1985 this Nautor land was granted to the petitioner.

3. Respondent No. 2 Dhani Ram had also filed an application for exchange of land. This application was filed on 10.12.1985 to the very same Deputy

Commissioner. It was sent to the Tehsildar Ghumarwin and was returned to the office of the Deputy Commissioner through the Sub Divisional Officer (Civil) in June 1986 and was not even decided till 4.2.1987 when the revision was decided by the Financial Commissioner.

4. Dhani Ram filed a revision petition before the Financial Commissioner who keeping into consideration all these facts and after making proper inquiry from the concerned officer came to the conclusion that the case of the applicant Piar Singh had been dealt with unusual speed only because of the reason that he was working as Kanungo at the relevant time. The Financial Commissioner also came to the conclusion that the private land of the petitioner comprised in Khasra No. 1145/1 belonging to the appellant was a small strip of land which was a Nallah. This land was surrounded on all side by the land of the appellant. This land was of no use to the Government but the land was got exchanged in total violation of Rule 27 of the Nautor Rules, which reads as follows:

27. Notwithstanding anything contained in the preceding rules grant of nautor lands may be made by the Deputy Commissioner in exchange for applicant's land, which may either be surrounded by Government forests or which may be beneficial to Government and the applicant in view of the soil Conservation, Consolidation of Holdings and aforestation, after getting the two areas to be exchanged properly evaluated to his personal satisfaction. An opportunity will also be given by the Deputy Commissioner to the Divisional Forest Officer of the area or his nominee to be heard before agreeing to such an exchange.

5. A bare perusal of this rule shows that when the land of an applicant is surrounded by a Government forest or when the exchange is beneficial to a Government and the two lands are of equal value an exchange can be ordered. The exchange u/s 27 is a mutual exchange between two parties. It presupposes that the Government has no objection to the exchange. In the present case the Forest Officer has appeared and opposed the exchange. Therefore, it cannot be said to be a mutually beneficial exchange. The Financial Commissioner also came to the conclusion that the report of the Tehsildar who has been examined as PW-5 is totally incorrect and appears to have been made in collusion with the field staff. After the Financial Commissioner passed the order the petitioner filed a civil suit which was dismissed and thereafter he filed an appeal which has also been dismissed. Hence the present appeal, which was admitted on the following questions of law:

1. Whether the order passed by the Financial Commissioner (Revenue) was without jurisdiction and the Courts below have wrongly held the same to be valid resulting mis-carriage of justice to the appellants?
2. Whether the appellants-plaintiffs are entitled for compensation for the improvements made over the suit land in view of the provisions of Section 51 of the Transfer of Property Act and the findings contrary recorded by the courts below are wrong and perverse?

6. It has been urged on behalf of the appellant that under Nautor Rules before the respondent moved the Financial Commissioner an appeal should have been filed to the Divisional Commissioner. I see no merit in this argument. Under Rule 28 an appeal from the order of the SDO (Civil) lies to the Deputy Commissioner and it also provides in case of original grant made by the Deputy Commissioner an appeal shall lie to the Commissioner. However, Rule 30 gives the power to the Financial Commissioner to at any time call for the records of any case pending before or disposed of by any officer subordinate to him. Rule 30 reads as follows:

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 proceedings 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.

7. A bare perusal of this rule shows that the Financial Commissioner is vested with wide ranging revisional jurisdiction. He has the jurisdiction and the authority to call for the records of any officer subordinate to him and it is not necessary that in every case alternative remedy should be exhausted. True it is, that normally the Court would expect a litigant to exhaust the alternative remedy but in cases like the present one where the Financial Commissioner found that revenue officials had connived with the appellant, who was also a revenue official, he was well within his rights to exercise his revisional jurisdiction without forcing the other party to file an appeal. Therefore, I find no merit in the first question raised by the appellant.

8. As far as the second question is concerned in view of the fact that it has been found that the petitioner has in fact misused his office to get the land in exchange he cannot be held entitled to the costs of improvements or compensation of any improvements which he may have done on the land.

9. I may also make it clear that when an order is passed by an authority who is competent under the Act even if the jurisdiction of the Civil Court is not ousted the Civil Court cannot sit in appeal over the order of such authority. The Nautor Rules contain a complete scheme for grant of Nautor land and provisions are

made for filing an appeal and there is a provision for filing a revision also. There is a complete adjudicatory scheme for deciding the disputes between rival parties. No doubt, the jurisdiction of the Civil Court has not been specifically ousted. As held by this Court time and again the jurisdiction of the Civil Court should not be deemed to be ousted in a casual manner. However, even assuming that the Civil Court had the jurisdiction what is the extent of jurisdiction? Can the Civil Court sit in Judgment over the order of the authority(s) duly authorized under a special Act or scheme to decide the matter. The obvious answer is that the Civil Court cannot act like an Appellate Court. It may go into the procedure followed by the authority. If there is violation of the rules of natural justice or if the authority has acted without jurisdiction or exercised jurisdiction not vested in it by law then the Civil Court no doubt can interfere but if an authority has taken a decision after hearing the parties in exercise of the jurisdiction vested in it the Civil Court has no jurisdiction to set-aside the order on merits. Such an order can only be set-aside in writ proceedings by this Court and not by a Civil Court.

10. In view of the above discussion, I find no merit in the appeal which is accordingly dismissed with costs assessed at Rs. 5000/-. It is further made clear that in case the petitioner is still in possession of the suit land the State can take the possession of the same in accordance with law and shall also be entitled to recover compensation from the appellant for use and occupation charges of the land.