

(2010) 09 SHI CK 0104
In the High Court Of Himachal Pradesh
Case No : CWP No. 5853 of 2010

Raj Kumar

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 20-09-2010

Acts Referred:

Citation : (2010) 09 SHI CK 0104

Hon'ble Judges : Kurian Joseph, C.J;Kuldip Singh, J

Bench : Division Bench

Judgement

Kurian Joseph, C.J.—The writ petition has been filed mainly with the following prayers:

- i) This Hon''ble Court may be pleased to pass appropriate writ, order and direction to the effect that the respondents be directed to frame policy with respect to rehabilitation and regularization of the encroachers in Bilaspur Town and after framing of the policy, to also consider the rehabilitation/re-settlement of the oustees in accordance with the Resettlement and Rehabilitation of Bhakhra Dam Oustees (Grant of Land) Scheme, 1971, Annexure P-12.
- ii) That the Hon''ble Court may be pleased to quash and set aside the impugned Notice Annexure P-11 and direct the respondents not to take any coercive steps against the petitioner.
- iii) To direct the respondents to act in consonance with the provisions of Section 163 (3) (4) (5) & (6) of the H.P. Land Revenue Act and to direct the respondents to act in consonance with the Land Revenue Act strictly in accordance with the Land Revenue Act strictly in accordance with the law laid down by this Hon''ble Court with respect to Section 163 of the Land Revenue Act.
- iv) To direct the respondents not to take any coercive steps by way of eviction or disturbing the petitioner from his place of business without framing any policy regarding rehabilitation, regularization etc. of the oustees as also the

encroachers and also to decide the claim of the petitioner having become the owner of the land in question by prescription and efflux of time.

2. The very same subject matter was considered by this Court in various judgments and in the latest judgment, CWP No. 968 of 2006, decided on 5.4.2010, this Court held as follows:

The petitioner has filed the writ petition praying that a direction to respondents No. 1 to 4, namely, Local Self Government, Deputy Commissioner, Bilaspur, Superintending Engineer, HPPWD, Bilaspur and Bilaspur Municipality to initiate steps for removal of encroachments in the respective area. The petitioner has pointed out some specific instances of encroachments to respondents No. 5 to 7. It is seen from the affidavit filed by respondents No. 1 to 4 that they are seized of the matter.

Learned counsel appearing for the private respondents, however, submits that the petitioner himself is an encroacher. It is also submitted that in Bilaspur, the State had already been directed by this Court to frame a policy with regard to the eviction of the encroachments. Be that as it may, in case there are encroachments, be it by the petitioner or by private respondents or for that matter anybody else, it is for the respondents No. 1 to 4 to see that the steps are taken to evict the encroachers and resume the Government land. Failure of exercise of such powers to protect the public property should invite other consequences apart from even civil consequences of injury suffered by the public property. Therefore, we dispose of the writ petition directing respondents No. 1 to 4 to finalise the steps in respect of all encroachments in Bilaspur town. The same shall be finalized and all encroachments duly evicted within a period of six months from today. We make it clear that in case of any failure in exercise of any statutory duty on the part of respondents No. 1 to 4, they shall be personally liable for the consequences thereof. We also make it clear that the judgment as above will not stand in the way of the statutory remedies available to the private respondents or for that matter any other affected party being pursued in accordance with law and the implementation of the judgment shall only be subject to the orders, if any, passed by the statutory authorities. The matter of implementation of the policy on rehabilitation will also be considered by the respondents in the process.

3. In the light of the directions issued, as above, safeguarding the interest of all concerned, it will not be appropriate for this Court to embark upon another enquiry as to whether the process, already initiated, is proper or not. If in the process of implementation of the judgment, as above, in case either the petitioner or any other person has a grievance, he is liable to be evicted only in accordance with law. It is certainly open to him to take recourse to his available remedies before the appropriate authority, since we have not interdicted such remedies of any such person. Therefore, it is for the petitioner or any other person to establish before the appropriate authority that they have a right to resist the eviction and continue to be in possession under law. In case such

attempt is made, appropriate authority will examine the matter, in accordance with law.

The writ petition is disposed of, so also the pending application(s), if any.

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