
(1979) 01 SHI CK 0013
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 132 of 1978

Ramji	Vs	APPELLANT
The State of Himachal Pradesh and Others		RESPONDENT

Date of Decision : 02-01-1979

Acts Referred:

Himachal Pradesh Nautor Land Rules, 1968 — Rule 8A

Citation : (1979) 8 ILR HP 1

Hon'ble Judges : T.U. Mehta, C.J.;D.B. Lal, J

Bench : Division Bench

Advocate : G.K. Gautam, for the Appellant; A.G. and S.S. Ahuja, for the Respondent

Final Decision : Dismissed

Judgement

T.U. Mehta, C.J.—The Petitioner herein applied for the grant of the land measuring 7-4 bighas situate in village Jangla, comprised by khasra No. 487/5 on the ground that he is an oustee as defined by Rule 2(1) of Rules of the Re-settlement and Re-habilitation of Bhakra Dam Oustees (Grant of Land) Scheme, 1971, which is hereinafter shortly referred to as the Re-settlement Scheme of 1971. The Rules came into force on 10th May, 1971, but the Petitioner made an application for the grant earlier that is on 18-8-1970, The grant was, however, made in his favour by the Deputy Commissioner on 21-5-1974 and pursuant to that order of the Deputy Commissioner, Patta was issued in favour of the Petitioner on 15-1-1976.

2. Thereafter in the year, 1976 Respondent No. 4 to this writ petition preferred an appeal to the Divisional Commissioner under Rule 14 of the Re-settlement Scheme. The Divisional Commissioner by his order dated 21st July, 1977, remanded the matter back to the Deputy Commissioner with the direction that "he should again decide the case afresh in accordance with the provision of the Scheme after affording full opportunity to both the parties." Against this order of the Divisional Commissioner, the Petitioner preferred an appeal to the Financial

Commissioner which petition is at present pending. In the meanwhile on 12-8-1977 the Deputy Commissioner passed an order staying the delivery of the possession of the land which is granted in favour of the Petitioner. The Petitioner, has, thereafter preferred this writ petition praying that the order passed by the Divisional Commissioner on 27-8-1977 should be quashed.

3. One of the contentions which is raised by the Petitioner in this writ petition is that the Respondent No. 4 did not have any right to prefer an appeal against the order of the grant made in his favour by the Deputy Commissioner on 21-5-1974. The Petitioner has not stated the facts on which he has based his contention that Respondent No. 4 had no right of appeal. However, looking to the provisions contained in Re-settlement Scheme, 1971, we find it necessary to give clarification of principle as to who can file an appeal under the Rules framed by the Government with regard to this Scheme. Rule 14 of this Scheme provides for an appeal and it is in the following terms:

14. Appeal-An appeal from the order of the Deputy Commissioner, Bilaspur under para 11 of the Scheme shall lie to the Divisional Commissioner within sixty days from the date of order., A further appeal from the appellate order of the Divisional Commissioner shall lie to the Financial Commissioner within 90 days from the date of the order of the Commissioner:

Provided that no second appeal shall lie when the original order is confirmed on the first appeal.

It is obvious by reference to this rule that it does not say as to who can file an appeal against the order passed by the Deputy Commissioner under Rule 11 making a grant of a particular piece of land in favour of a particular oustee. Under the circumstances, it is necessary to refer shortly to the scheme of the rules with a view to decide who can prefer an appeal under the above quoted Rule 14.

The rules under the Re-settlement Scheme, 1971, have been framed with an obvious idea to provide for re-settlement and rehabilitation of the persons who are ousted from their own land which is acquired in connection with Bhakra Dam project. The preamble of rules refers to Rule 8A of Himachal Pradesh Nautor Rules, 1968, and says that these Nautor Rules provide for framing a separate set of scheme for the purpose of grant of land for re-settlement and re-habilitation of the persons displaced as a result of anything done for any public purpose. Now if a reference is made to Rule 8A of Nautor Rules, 1968, we find that this rule does not provide for framing of a separate set of scheme though it does contemplate a separate set of scheme for re-habilitation and re-settlement. This will be evident by a bare perusal of the language of the Rule 8-A of the Nautor Rules which is in the following terms:

8A. Nothing under these rules, shall apply to the grant of land for the rehabilitation of persons displaced, as a result of anything done for any public purpose to be recognised as a public purpose for this rule, by the State

Government. Grant of land for this purpose will be made according to the formal scheme approved by the State Government either generally or specifically for each project or scheme or other action entailing such displacement.

Thus it is apparent from the wording of this Rule 8A that though it contemplates a separate set of rules for the purpose of re-habilitation in case of acquisition for public purpose, it cannot be said that this rule "provides for" framing a separate scheme for that purpose. Under the circumstances Nautor Rules have no connection with the rules framed under the Re-settlement Scheme, 1971, except to the extent to which the rules framed under the Re-settlement Scheme, 1971 make specific reference to Nautor Rules.

4. The Re-settlement Scheme Rules give the definition of the expression "oustee" as meaning a person who has been deprived of his house, land or both, on account of acquisition proceedings in connection with the Bhakra Dam Project and entitled to compensation in lieu thereof. Rule 3 of the scheme prescribes the purpose for which the land is granted and says that the land may be granted to an oustee for subsistence purpose; Rule 4 provides for maximum limit of grant; Rule 5 provides for eligibility of a grantee; Rule 6 for charges, Rule 7 for land revenue; Rule 8 for resumption of the grant, Rule 9 for the application for the grant of land, Rule 10 for procedure to be adopted before the grant is made, Rule 11 for the power of the Deputy Commissioner to make an order of grant, Rule 12 for payment of Nazarana etc. as well as the grant of the Patta, Rule 13 for exchange, and Rule 14 for appeal. Out of all these rules, it would be necessary to refer to Rule 10 which is in the following terms:

10. Procedure-On receipt of the application under Clause 9 the Forest Department's representatives, i.e., the Range Officer will inspect the spot along with the Tehsildar/Naib-Tehsildar entrusted with the work by the Deputy Commissioner, on the dates to be fixed by the Deputy Commissioner so that there is no delay in granting the land. The joint report of the Range Officer, Tehsildar/Naib-Tehsildar, after spot inspection, shall be sent to the Deputy Commissioner direct to minimise the delay. No notice to the right-holders including Panchayat and the Forest Department will be issued.

This Rule 10 says that the order about the grant is required to be made after receiving a joint report of the Range Officer, who works as Forest Department representative, and the concerned Tehsildar or Naib-Tehsildar. This joint report is made after the spot inspection, and is required to be sent to the Deputy Commissioner direct with a view to minimise the delay. The peculiar feature of Rule 10 is that it specifically provides that no notice to the right holders including the Panchayat or Forest Department should be separately issued. This provision is made with a view to expedite the grant in favour of an oustee who is required to be re-settled and rehabilitated. But the fact remains that for want of this specific notice a case would arise in which a person whose equitable or legal rights are affected would not come to know about the proceedings of grant, and would, therefore, not be able to take any objection to the grant.

5. It is in this context that the question as to who can file an appeal under Rule 14 is required to be decided.

6. As already noted by us above, neither Rule 14 or any other rule framed under the Scheme specifically provides that only a particular category of persons can prefer an appeal under Rule 14. Therefore, the first question which arises to be considered is whether it can be said that any person belonging to any category whatever, can prefer an appeal under Rule 14. We find that a broad proposition that after the order of grant is made under Rule 11, anybody can prefer an appeal under Rule 14 within the period of limitation even if he is not affected by the order of grant, cannot be accepted. With regard to the Nautor Rules, 1968, we have discussed this question in the judgment given by us as regards the common points arising out of the Nautor group of matters in Percy Chauhan v. The state LPA No. 37 of 1973 and Ors. allied matters. There in we have referred to two Supreme Court judgments, namely, *Adi Pherozshah Gandhi Vs. H.M. Seervai*, Advocate General of Maharashtra, Bombay, *Jasbhai Motibhai Desai Vs. Roshan Kumar, Haji Bashir Ahmed and Others*, . Relying upon these two judgments and especially the observations made by Sarkaria J. in *J.M. Desai's* case, we have held that a mere busy-body who has no interest in the land granted and is in no way connected with the said grant, has no right to file an appeal, while, on the other hand, a person whose legal or equitable right is infringed by the grant, can prefer an appeal. In that judgment we have also referred to a third category of the persons who have got some sort of interest in the land. This category of persons, as observed by us in that judgment, is covered by the residents of the estate or corporate bodies interested in the estate because every resident or such corporate body of an estate out of which the land belonging to the State is granted would be interested in preserving the public character of the land. There would be one more category of persons which is required to be considered for the purpose of filing an appeal under Rule 14. This category consists of oustees as defined by the Rules. We have already referred to the definition of the expression of an Oustee which says that any person who has been deprived of his house, or land on account of the acquisition proceedings in connection with Bhakra Dam Project and is entitled to compensation in lieu thereof is an oustee.

7. Appendix-A, which is the application form for the grant of land to be made by an oustee, and Clause (i) of Rule 9, clearly indicate that whoever is the oustee covered by the above referred definition can apply for the grant of land from anywhere in the District. Therefore, every eligible oustee must be considered as interested in the grant made to any other persons under the rules framed under the Re-settlement Scheme of 1971. Therefore, this would be the third category of persons who can prefer an appeal, under Rule 14.

8. To summarise our findings it can be said that three categories of persons can prefer an appeal under Rule 14:

(i) those who have any legal or equitable right in the land granted;

(ii) those who are eligible oustees as defined by the rules; and

(iii) those who are the residents of the estate or the corporate bodies such as Panchayat or Co-operative Societies interested in the estate.

In our opinion the persons coveted by these three categories can prefer an appeal under Rule 14 even if they have not filed any objection during the course of the original proceedings contemplated by Rule 10. The reason is that as already noted above, Rule 10 contemplates an expeditious procedure and specifically states that right holders including the Panchayat and the Forest Department need not be served with any notice of the application for grant. Under the circumstances the residents of the estate or other corporate bodies in the estate would, in a particular case, not be knowing about the existence of any application for grant under the scheme, and if their legal right or interest is affected by the grant, a serious prejudice would be caused to them. Therefore, even though the persons belonging to the above three categories have not preferred any objection during the original proceedings, they would be entitled to prefer an appeal within limitation under Rule 14 of the Scheme.

9. So far as the facts of the present case are concerned, the Petitioner as already stated above, raised a contention in the writ petition that the Respondent No. 4 did not have any right to prefer an appeal against the order of grant. But the Petitioner has not furnished any material to us to show whether Respondent No. 4 falls within any of the categories referred to above or not. The facts of the case show that the Petitioner has already preferred an appeal to the Financial Commissioner and that that appeal is still pending. That appeal being an efficacious remedy the proper course for the Petitioner would be to avail of that remedy before the Financial Commissioner. The Financial Commissioner will be at liberty to decide the question whether Respondent No. 4 has any right to prefer an appeal against the grant in favour of the Petitioner. He shall decide that question in light of principles settled and observations made by us in the foregoing portion of the judgment as regards the persons who could file an appeal under Rule 14 of the Scheme.

10. So far as this writ petition is concerned, it would fail subject to the above referred observations because the Petitioner has got an alternative remedy in form of an appeal before the Financial Commissioner which is already pending. The writ petition, is, therefore, dismissed and the rule is discharged without any order as to costs. Interim order passed by this Court in this writ petition stands automatically vacated.