
(2017) 07 SHI CK 0007
In the High Court Of Himachal Pradesh
Case No : 9182 of 2014

Rishavh Kalia

APPELLANT

Vs

The State of Himachal Pradesh, & Ors.

RESPONDENT

Date of Decision : 06-07-2017

Acts Referred:

[Constitution of India](#), [Article 226](#) -
Himachal Pradesh Public Premises (Rent Recovery and Land Eviction) Act, 1971,
Section 2, Section 4(1)

Citation : (2017) 07 SHI CK 0007

Hon'ble Judges : Sanjay Karol, Sandeep Sharma

Bench : Division Bench

Advocate : Sanjeev Bhushan, Maan Singh, Shrawan Dogra, Anup Rattan,
Romesh Verma, J.K. Verma

Final Decision : Dismissed

Judgement

1. By way of instant petition filed under Article 226 of the Constitution of India, the petitioner has prayed for following main reliefs:

"(i) That an appropriate, writ, order or directions may kindly be issued and impugned orders dated 10.12.2013 Annexure P-3, passed by respondent No. 3 and dated 28.11.2014 Annexure P-7, passed by respondent No.2, may kindly be quashed and set aside."

2. Briefly stated the facts as emerge from the record are that a complaint was filed by respondent No. 4 before respondent No. 3 that the petitioner is in unauthorized occupation of forest land measuring 0-1-10 Bigha in Maharaja-III District Kullu and has constructed a cemented shop thereupon. It is further alleged in the complaint that a demarcation was conducted on 22.5.2006, in which petitioner was found to be in unauthorized occupation of the land as stated above. Notice dated 14.3.2007 under Section 4(1) of HP Public Premises and Land (Eviction and Rent Recovery) Act, 1971 was issued to the petitioner. Petitioner filed reply to the same, denying the factum of encroachment. Petitioner stated

that he is owner of land in Khasra No. 494 measuring 0-10-04 Bigha. He further averred that the house was constructed upon his own land and alleged demarcation was not carried out as per provisions of para 10.10 of Land Records Manual as no pucca points were affixed before conducting the demarcation. Parties led evidence and statements of witnesses were also recorded. Petitioner also filed an affidavit stating that he was owner of Khasra N. 494 and construction was raised on this Khasra number. Petitioner further stated that, at the most, it was a boundary dispute and controversy was to be adjudicated by a Civil Court, however, the fact remains that respondent No.3 held petitioner to be encroacher upon government/forest land in Maharaja-III to the extent of 0-1-10 Bigha and ordered his eviction from the land in question. Petitioner filed an appeal before respondent No.2. Aforesaid appeal having been filed by the petitioner was dismissed by respondent No.2 on 28.11.2014. In the aforesaid background, the petitioner has approached this Court, with aforementioned relief.

3. Mr. Sanjeev Bhushan, learned Senior Advocate duly assisted by Mr. Maan Singh, Advocate, argued that the authorities below failed to appreciate the evidence led by the parties and also failed to apply law applicable to the facts of the case and as such impugned order of eviction deserves to be quashed and set aside. Mr. Bhushan, learned Senior Advocate, further argued that as per Para 10.10 of Land Records Manual, where boundaries of government land and private land are to be demarcated, an officer, not below the rank of Assistant Collector 1st Grade, is authorized to carry out demarcation, but in this case, Kanungo has carried out demarcation on 22.5.2006, which led to issuance of notice without adhering to the procedure laid down in the Land Records Manual as well as instructions issued by Financial Commissioner (Appeals). Mr. Bhushan further stated that petitioner has not encroached over government land, rather he has constructed shop over his own land. Mr. Bhushan referred to photographs of the spot (Annexure P-8) to demonstrate that construction is within the land owned and possessed by the petitioner. Mr. Bhushan also contended that Khimi Ram, Kanungo, who conducted alleged demarcation has feigned ignorance about area of Khasra No. 494 and also no pucca points were affixed during demarcation. Mr. Bhushan further states that Kanungo admitted that there was private land adjacent to government land and as per standing instructions of Financial Commissioner, he was not competent to carry out demarcation. While inviting attention to the statement of PW-2 Dharmender Kumar, Patwari, Mr. Bhushan stated that aforesaid witness stated in his cross-examination that "Latha" and "Musabi" of the area was in dilapidated condition and as such correct demarcation of the land could not have been given and further without carrying out demarcation of land owned and possessed by petitioner, no Tatima could have been prepared by Patwari without having attested copies of Musabi of Khasra No. 494. Mr. Bhushan further contended that petitioner applied for attested copies of Musabi, which was not provided to petitioner on the ground that same was torn and not available in the record, as such, alleged demarcation carried out in the absence of necessary documents, is under clout. With these

arguments, Mr. Bhushan, prayed that the petition be allowed and orders passed by Collector, Forest Division Kullu, dated 10.12.2013, order eviction of the petitioner from alleged encroached land, and that of Divisional Commissioner, Mandi Division in Case No. 362/2013 dated 28.11.2014, may be quashed and set aside.

4. Mr. Shrawan Dogra, learned Advocate General, duly assisted by Mr. Anup Rattan, learned Additional Advocate General, while refuting the contentions made by the learned counsel representing the petitioner, stated that petitioner has not approached the Court with clean hands. Petitioner is in unauthorized occupation of forest land, as defined under Section 2 of the HP Public Premises and Land (Eviction and Rent Recovery) Act, 1971 and he had rightly been ordered to be evicted from the encroached land. Mr. Dogra, further argued that the petitioner had failed to challenge the demarcation given by Kanungo before competent authority and as such same has attained finality. Mr. Dogra, further contended that apart from above, the petitioner has also failed to prove his adverse possession over the land in question, for want of documentary proof. To support his contentions, Mr. Dogra, learned Advocate General, drew attention of this Court to observation made in CWP No. 2521 of 2014 alongwith CWP's No. 2180, 1907 and 2889 of 2014, decided on 2.6.2014. While referring to the excerpts from the judgment, Mr. Dogra, tried to impress upon this Court that in the absence of petitioners in aforesaid petitions, having put forth any documentary proof of their land being in contiguity with the government land, debars them from challenging demarcation report carried out by the Kanungo and further that in the absence of any challenge laid by the petitioners in aforesaid cases, to the demarcation report given by Kanungo before appropriate authority, an inference can be drawn that the demarcation report given by Kanungo in those cases, was true and valid. Mr. Dogra, further averred that the land in question is a forest land categorized as "Bila Paimud", since the time when State of Himachal Pradesh was formed from erstwhile State of Punjab. It was further averred on behalf of the State that, now, the Government have withdrawn instructions, whereby only Tehsildar or Naib Tehsildar was competent to carry out demarcation in cases of government land and now Kanungo is authorized to carry out such demarcation.

5. We have heard the learned counsel for the parties and gone through the record carefully.

6. Before examining aforesaid submissions having been made by the learned counsel representing the parties, this Court deems it fit to take note of the averments contained in the affidavit dated 23.10.2015 filed by Conservator of Forests, Kullu, in pursuance to order dated 24.8.2015. Vide order dated 24.8.2015, this Court, taking note of the pleadings, as well as submissions having been made by the learned counsel representing the petitioner, directed respondent-State to conduct demarcation afresh in the presence of the petitioner and submit report within four weeks. Perusal of aforesaid affidavit suggest that

Tehsildar Kullu, conducted fresh demarcation on 21.9.2015, in the presence of petitioner and submitted demarcation report to the Range Forest Officer, vide communication dated 22.9.2015 (Annexure R-I of the affidavit of the Conservator of Forests). It further emerges from the above referred affidavit that before any action could be taken pursuant to aforesaid demarcation report dated 21.9.2015, Deputy Commissioner, Kullu, vide communication, Annexure R-II, intimated the respondent- Department that many complaints have been received regarding demarcation report submitted by Tehsildar Kullu. Deputy Commissioner further informed that in view of aforesaid complaint, demarcation report submitted by Tehsildar Kullu to Range Forest Officer was examined and compared with Tatima prepared in 2006, when initially, encroachment proceedings were initiated against the petitioner, wherein he was found to have encroached upon the Government land. Since demarcation report submitted by Tehsildar Kullu was not found to be factually correct, Deputy Commissioner, Kullu, directed District Revenue Officer, Kullu, to demarcate land. It also emerges from the affidavit that the District Revenue Officer went to the spot on 26.9.2015 and demarcated the land in question with the help of revenue staff, in the presence of petitioner and submitted report (Annexure R-III), which clearly establishes that petitioner has encroached upon the government land. Perusal of report dated 28.9.2015 (Annexure R-III) submitted by District Revenue Officer, clearly suggests that demarcation was carried out strictly in terms of instructions issued in this regard by Financial Commissioner (Appeals), which finds specific mention in the demarcation report that demarcation was carried out on the spot, after carrying out measurement from different sides and petitioner was found to have encroached upon 0-1-12 Bigha of land. Perusal of demarcation report placed on record leaves no doubt in the mind of the Court that demarcation was carried out in a detailed and methodical manner associating petitioner as well as revenue staff. Perusal of order dated 14.6.2016 passed by this Court suggests that aforesaid demarcation report submitted by District Revenue Officer, in compliance to order of Deputy Commissioner, Kullu, was objected to by the petitioner on the ground that it was conducted at his back, as such, this Court directed Deputy Commissioner, Kullu, to conduct demarcation in the presence of both the parties and submit report, within four weeks. In compliance of aforesaid direction contained in order dated 14.6.2016, Sub Divisional Magistrate, Kullu, himself visited the spot/site and carried out demarcation in the presence of Deputy Commissioner, Kullu alongwith revenue staff. Perusal of report submitted (available at page-112 of paper-book), suggests that petitioner was also associated at the time of demarcation. Though, Mr. Sanjeev Bhushan, learned Senior Advocate, while inviting attention of this Court to the demarcation report referred to above, made an endeavour to persuade this Court to accept his submissions that demarcation was not carried out in accordance with law as well as instructions issued in this regard by Financial Commissioner (Appeals), but, this Court, after having carefully perused report submitted by Sub Divisional Magistrate, Kullu, District Kullu, sees no reason to conclude that demarcation in question was not carried out in accordance with law. Rather, this Court, after

having gone through the demarcation report carefully, is convinced and satisfied that demarcation was carried out strictly in accordance with law, wherein petitioner was admittedly found to have encroached 0-1-12 Bigha of government land. Though, in the counter-affidavit, petitioner stated that Deputy Commissioner is vindictive against him but no material has been placed on record to substantiate allegations against Deputy Commissioner, who, admittedly, on the directions of this Court, got demarcation carried out on the spot. This Court, sees no reason to doubt the credibility of Deputy Commissioner, who, prior to issuance of direction on 14.6.2016, had also got land demarcated afresh, after having received complaints that Tehsildar gave a wrong report, showing therein no encroachment on the part of the petitioner.

7. Another argument having been made by Mr. Sanjeev Bhushan, learned Senior Advocate, is also without any merit that no demarcation, if any, could be carried out on the spot without there being Musabi. While inviting attention of this Court to the information supplied to the petitioner under Right to Information Act, Mr. Bhushan, learned Senior Advocate, stated that no demarcation, if any, could be carried out solely on the basis of micro-films. Perusal of annexure X annexed to the counteraffidavit dated 4.5.2016 (at page-111) suggests that department, in response to query raised by petitioner, intimated that as of now, there was no notification/direction from the Government of Himachal Pradesh, for demarcation solely, on the basis of micro -films.

8. True it is, that aforesaid notification as provided to the petitioner suggests that no notification/direction has been issued to revenue staff for carrying out demarcation solely on the basis of micro-films, but, after having carefully perused aforesaid notification, it appears that information as referred to above, cited by petitioner, has been wrongly interpreted by the petitioner, whereby he has been informed that demarcation can not be only conducted on the basis of micro-films, rather, same can be carried out on the basis of Musabi also, where it is available. Careful perusal of demarcation conducted on 20.7.2016, by Sub Divisional Magistrate, in the presence of Deputy Commissioner, clearly suggests that demarcation/measurements of disputed site was started with the help of digital map and Aks Musabi , annexed as Annexures A-1 and A-2, with the report. Statement of the petitioner recorded at the time of demarcation (available at page-119) also suggest that before starting demarcation, petitioner was acquainted with the process of demarcation and measurement scale was shown to him and corresponding value of it was also brought to the notice of petitioner (1 Karam = 56 Inches) and, thereafter, Measuring Chain, was got verified with Paimana scale, from the petitioner, which was found to be correct. It also emerges from the report that permanent points were traced, which were shown to the petitioner and he accepted the same as correct. Perusal of documents annexed with the demarcation report (available at page 120) suggests that demarcation was carried out in the presence of the petitioner, but he did not accept the same to be correct.

9. After, having carefully perused record made available on the file, this Court finds that encroachment on government land by the petitioner was initially detected in the year 2006 and, accordingly, proceedings were initiated against him under HP Public Premises and Land (Eviction and Rent Recovery) Act, 1971. Eviction orders having been passed by Collector, Forest Division, Kullu, were further assailed before Divisional Commissioner, Mandi, in the appeal filed under Section 9 of the Act *ibid*, by the petitioner, vide order dated 28.11.2014. Since the year 2014, present petition, whereby challenge was laid to the aforesaid order passed by Divisional Commissioner, is pending before this Court. Though, record duly suggests that eviction orders were passed on the basis of report submitted by revenue agency, that petitioner has encroached upon government land, but, despite that, this Court, showing indulgence, got fresh demarcation conducted on the spot on three occasions, wherein petitioner was repeatedly found to have encroached upon government land.

10. This Court, after having carefully perused report submitted by Collector, who conducted demarcation in the presence of Deputy Commissioner, Kullu, sees no reason to interfere in the order passed by authorities under the Act *ibid*, whereby petitioner has been held to be encroacher upon government land.

11. Needless to say that if the petitioner is aggrieved and dissatisfied with the aforesaid reports of demarcation conducted by Collector, in terms of order passed by this Court, he had a remedy to assail the same in accordance with law. Definitely, orders passed by this Court from time to time, during pendency of the present petition, directing revenue authorities to carry out demarcation on the spot, can not be allowed to be used as a shield by the petitioner to remain in possession over encroached land. Once, it stands duly established on record that the petitioner has encroached upon government land, he is bound to vacate the same, without any further delay. It may be noticed that the petitioner in his writ petition as well as subsequent affidavits filed by him has contended that demarcation report in the present case is totally disputed, especially in view of the fact that land is owned by the petitioner, adjacent to the alleged encroached land, as such, question with regard to encroachment, if any, can be solved only by a civil Court.

12. Though, this Court, after having taken note of dispute, if any, with regard to encroachment having been made by the petitioner is convinced and satisfied that case has been duly adjudicated by authority prescribed under the Act, but, even if aforesaid contention, as has been specifically taken in the counter-affidavit, is presumed to be correct, appropriate remedy for the petitioner for redressal of his grievance, if any, lies somewhere else and not by way of a writ petition. It is well settled that disputed questions of facts can not be looked into by a writ court.

13. Hon''ble Apex Court in case *Bhuvnesh Kumar Dwivedi vs. M/s Hindalco Industries Ltd.* 2014 AIR SCW 3157 has held that the Courts while examining correctness and genuineness of the orders of courts below have very limited powers to appreciate the evidence adduced before the court below, especially the

findings of fact recorded by the courts below and same can not be questioned in writ proceedings and writ court can not act as an appellate Court. Careful perusal of aforesaid judgment having been relied upon by the learned Advocate General, clearly suggests that error of law which is apparent on the face of record can be corrected by writ Court but not an error of fact, however, grave it may appear to be. Hon''ble Apex Court has further held in the aforesaid judgment that if finding of fact is based upon no evidence that would be recorded as error of law which can be corrected by a writ of certiorari. Hon''ble Apex Court has further held that in regard to findings of fact recorded by court below, writ of certiorari can be issued if it is shown that in recording said findings, court below erroneously refused to admit admissible evidence or erroneously admitted inadmissible evidence, which influenced impugned findings. It would be profitable to reproduce following paras of the judgment:

"16.The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior Courts or tribunals: these are cases where orders are passed by inferior Courts or Tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an Appellate Court. This limitation necessarily means that findings of fact reached by the inferior court or Tribunal as result of the appreciation of evidence cannot be reopened for questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ Court. It is within these limits that the jurisdiction conferred on the High Courts

under Article 226 to issue a writ of certiorari can be legitimately exercised.

14. Consequently, in view of detailed discussion made herein above, we see no reason to interfere with the order of eviction issued by Collector, which otherwise appears to be based upon correct appreciation of evidence adduced on record by the respective parties. Petition being devoid of merit, is dismissed. Pending applications, if any, are disposed of. Interim directions, if any, are also vacated.