

(2016) 08 SHI CK 0097
In the High Court Of Himachal Pradesh
Case No : CWP No. 237 of 2016

Sandhya	Vs	APPELLANT
State of H.P.		RESPONDENT

Date of Decision : 08-08-2016

Acts Referred:

Citation : (2016) 4 HimLR 2416 : (2017) 1 RentLR 128

Hon'ble Judges : Mr. Mansoor Ahmad Mir, CJ. and Mr. Tarlok Singh Chauhan, J.

Bench : Division Bench

Advocate : Mr. Shrawan Dogra, Advocate General with Mr. Anup Rattan and Mr. Romesh Verma, Additional Advocate Generals and Mr. J.K. Verma, Deputy Advocate General, for the Respondents; Mr. Partap Singh Goverdhan, Advocate, for the Petitioner

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J. - Petitioner having been found to have encroached upon the Government land, declared as wild life sanctuary has been ordered to be evicted therefrom in proceedings initiated against her under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (for short the "Act") and aggrieved thereby has preferred this petition praying therein for the following substantive reliefs:-

"(a) to issue writ of certiorari or direction in nature thereof directing the respondents to declare the eviction order Annexure P-4 and P-6 as null and void and nonest in the eyes of law the same have been passed without adopting proper procedure for the purpose".

2. Brief facts giving rise to the instant petition are that the Forest Officer, Wild Life Sanctuary Range Khajjiar instituted eviction proceedings against the petitioner on the ground that she had encroached upon the Government land, declared by the State Government to be a wild life sanctuary to the extent of 0-0-3 biswansi in Khasra No. 40/1 and 37/1/1 in Khajjiar, District Chamba. Upon

notice being issued, she filed objections, wherein she denied having made any encroachment over the said land.

3. Respondent No. 4 after recording the evidence and by placing reliance upon the testimony of PW-1 Patwari Surender Kumar and PW-2 Kanungo Dharam Chand came to the conclusion that the petitioner had made encroachment to the extent mentioned above and accordingly ordered her eviction.

4. Aggrieved by the order passed by respondent No. 4, the petitioner filed an appeal before respondent No. 3. However, the same also came to be dismissed vide order dated 4.4.2015.

5. It is against both these orders that the instant writ petition has been filed on the ground that in absence of the demarcation report having been placed on record, the eviction orders cannot be sustained. It was further averred that the eviction could not have been ordered only on the basis of tatima and jamabandi and/or on the basis of statements of witnesses, who are not even competent to demarcate the land of the Government.

6. The respondents in their reply have raised preliminary objections regarding maintainability of the petition. It has been stated that the writ petition has been filed by twisting and distorting the facts. As regards demarcation, it has been specifically stated that the petitioner did not associate herself in the said demarcation and rather refused to accept the service of notice of demarcation. However, she subsequently appeared before the Tehsildar, Chamba, who thereafter recorded her statement. That apart, it is averred that the petitioner by her own act and conduct is estopped from filing the writ petition, as she had herself stated before respondent No. 4 that she was not aware regarding the Khasra numbers of the land over which she had constructed a hotel. She also expressed ignorance regarding the area of the hotel purchased by her 17-18 years back. She had further claimed that she was not aware about the fact that her land is adjoining the forest land and was also not aware about the area of the hall, toilet or kitchen which she had got constructed for the hotel. It is further averred that respondents have already filed a criminal case against the petitioner under Section 447 IPC read with Sections 32/33 of the Indian Forest Act, vide FIR No. 202/09 and the same is pending adjudication in the Court of learned Chief Judicial Magistrate, Chamba. We have heard the learned counsel for the parties and have also carefully gone through the material placed on record.

7. Adverting to the first contention regarding the demarcation report having not been placed on record, suffice it to say that this ground is not available to the petitioner, as she herself refused to associate with the demarcation, despite having been called upon by a written notice to this effect. That apart, nothing prevented the petitioner from filing an application with either respondent No. 4 or before the appellate authority or even before this Court calling upon the respondents to place on record the demarcation report or making a request for fresh demarcation. Having failed to do so, it is clearly evident that the plea now

sought to be raised is nothing, but an afterthought and therefore, cannot be permitted to be raised in the instant proceeding.

8. As regards the contention of the petitioner that the eviction order has been passed mainly on the basis of tatima and jamabandi and the statements of witnesses, who are not competent to demarcate the land of the Government. Even this contention is equally without force, as the records would indicate that this plea was not raised before either of the authorities below and therefore, the petitioner is precluded from raising this plea, more particularly when the same does not go to the root of the jurisdiction of the authorities below.

9. The petitioner is a rank trespasser and encroached upon the land which falls within the wild life sanctuary. In such circumstances, where an encroacher, illegal occupant or a land grabber of public property seeks to protect his or her illegal possession by only prolonging the litigation and raises all sorts of pleas, then the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immoveable property and give upper hand to the encroachers, unauthorized occupants or land grabbers, more particularly when these unauthorized occupants raises the plea of adverse possession as was raised in this case before respondent No. 3, but given up before this Court.

10. In this contest, it shall be fruitful to refer to the following observations of the Hon'ble Supreme Court in Mandal Revenue Officer v. Goundla Venkaiah and another (2010) 2 SCC 461:

"47. In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep every day vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularized. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected by adverse possession, the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give upper hand to the encroachers, unauthorised occupants or land grabbers.

48. In State of Rajasthan v. Harphool Singh 2000 (5) SCC 652, this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. The suit filed by the respondent against his threatened dispossession was decreed by the trial Court with the finding that he had acquired title by adverse possession. The first and second appeals preferred by the State Government were dismissed by the lower appellate Court and the High

Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the plaintiff-respondent could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below: (SCC p. 660, para 12)

"12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher where he had none. The decision in *P. Lakshmi Reddy v. L. Lakshmi Reddy* adverted to the ordinary classical requirement -- that it should be *nec vi, nec clam, nec precario* -- that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus."

49. A somewhat similar view was expressed in *A.A. Gopalakrishnan v. Cochin Devaswom Board* 2007 (7) SCC 482. While adverting to the need for protecting the properties of deities, temples and Devaswom Boards, the Court observed as under: (SCC p. 486, para 10)

"10. The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebait/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

11. The petitioner has successfully managed to prolong the litigation for over six years and has managed to illegally squat over prime property located at Khajjiar, which is commonly known as "Mini Switzerland", that too by encroaching upon an area that falls in wild life sanctuary. In this manner the petitioner has successfully turned the litigation into a fruitful industry.

12. The Hon"ble Supreme Court in *South Eastern Coalfields Limited v. State of M.P. and others* (2003) 8 SCC 648, held as under:

"28 - .Litigation may turn into a fruitful industry. Though litigation is not gambling yet there is an element of chance in every litigation. Unscrupulous

litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced. We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation."

13. It is therefore the duty of this court to neutralise any unjust enrichment and undeserved gain made by the litigants only on account of keeping the litigation alive. In *Indian Council for Enviro Legal-Action v. Union of India and others* (2011) 8 SCC 161, it is noticed that conduct of the parties is to be taken into consideration and it was held as follows: -

"197. The other aspect which has been dealt with in great details is to neutralise any unjust enrichment and undeserved gain made by the litigants. While adjudicating, the courts must keep the following principles in view:

1. It is the bounden duty and obligation of the court to neutralise any unjust enrichment and undeserved gain made by any party by invoking the jurisdiction of the court.
2. When a party applies and gets a stay or injunction from the court, it is always at the risk and responsibility of the party applying. An order of stay cannot be presumed to be conferment of additional right upon the litigating party.
3. Unscrupulous litigants be prevented from taking undue advantage by invoking jurisdiction of the Court.
4. A person in wrongful possession should not only be removed from that place as early as possible but be compelled to pay for wrongful use of that place and pay fine, penalty and costs. Any leniency would seriously affect the credibility of the judicial system.
5. No litigant can derive benefit from the mere pendency of a case in a court of law.
6. A party cannot be allowed to take any benefit of his own wrongs.
7. Litigation should not be permitted to turn into a fruitful industry so that the unscrupulous litigants are encouraged to invoke the jurisdiction of the court.
8. The institution of litigation cannot be permitted to confer any advantage on a party by delayed action of courts."

14. Accordingly, this petition is dismissed. The pending applications, if any, are

also disposed of.

15. However, before parting, it needs to be clarified that the eviction to be carried out by the respondents shall be at the cost of the petitioner and this decision shall also not come in the way of the respondents in claiming any other relief against the petitioner including mesne profits etc. before the competent authority or Court of law.