
(2019) 09 SHI CK 0058

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4903 Of 2014

Shyam Singh

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 04-09-2019

Acts Referred:

H.P. Public Premises And Land (Eviction And Rent Recovery) Act, 1971 — Section 4(1),
9

Citation : (2019) 09 SHI CK 0058

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

**Advocate : H.S. Rangra, Dinesh Thakur, Amit Kumar Dhumal, Divya Sood,
Sunny Datwalia**

Final Decision : Allowed

Judgement

Ajay Mohan Goel, J

1. By way of this writ petition, petitioner has challenged order dated 30.04.2012 (Annexure P-5), passed by the Court of Collector, Sub Division Joginder Nagar, District Mandi, HP, in case No. 26, titled as Assistant Engineer H.P.P.W.D. Sub Division No. II, Joginder Nagar versus Sh. Shyam Singh, decided on 30.04.2012, under the provisions of H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971, vide which, said authority has held that petitioner is in unauthorized occupation of public premises, subject matter of the said proceedings and has ordered the petitioner to vacate the same within a period of 30 days, as also order dated 06.05.2014 (Annexure P- 8), vide which, appeal filed by the petitioner against the order passed by the Collector, Sub Division, Joginder Nagar, was dismissed by the learned Appellate Authority, i.e. Divisional Commissioner, Mandi Division.

2. Brief facts necessary for adjudication of the present petition are that proceedings were initiated against the petitioner under Section 4(1) of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter

referred to as the 'Act') to the effect that petitioner had encroached upon the government land comprised in khasra No. 1046/14, measuring 8-8 Sq. yards at RD No. 0/120 to 0/195 in Muhal Joginder Nagar/396 in Tehsil Joginder Nagar on Joginder Nagar-Sarkaghat-Ghumarwin road by constructing a house. Petitioner responded to the proceedings so initiated under the Act by taking the stand that he has not encroached upon the government land and, in fact, had constructed the house on his own land.

3. On the basis of demarcation, which was conducted, petitioner was found to have had encroached upon the government land and accordingly vide Annexure P-5, Collector Sub Division Joginder Nagar ordered the eviction of the petitioner from the public premises.

4. Appeal preferred by the petitioner against said order under Section 9 of the Act was dismissed by the learned Appellate Authority vide order dated 06.05.2014 (Annexure P-8).

5. Mr. H.S. Rangra, learned Counsel for the petitioner, has argued that the order in appeal passed by learned Divisional Commissioner, Mandi, is not sustainable in the eyes of law as the appellate authority passed a common order in number of appeals listed before it without appreciating the individual facts of each case and by ignoring the legal position that as it was hearing a first appeal, it was incumbent upon the learned appellate authority to have had gone into the facts of each individual case and then returned the findings on the basis of the grounds which were urged by the appellant before it.

6. I have heard learned Counsel for the petitioner as also learned Additional Advocate General and gone through the impugned orders.

7. A perusal of the order passed in appeal by learned Appellate Authority demonstrates that number of appeals stood disposed of by the Appellate Authority vide common decision dated 06.05.2014, including the appeal filed by the present petitioner. However, there is no discussion in the body of the order as to what was the factual matrix of each case being decided by it and on what ground, the order passed by learned Collector in the case of each appellant including the petitioner was being upheld by the appellate authority. A perusal of the order demonstrates that the appellate authority has taken a note in general of the dispute involved in the appeals. Nothing can be made out from the body of the order as to facts of which particular case were being referred to or were taken into consideration while deciding the appeal. The way in which the appeals were decided by the learned Appellate Authority defies all logic.

8. As the appellate authority was technically hearing a first appeal against the order of eviction passed against the appellants, including the present petitioner, it was incumbent upon the appellate authority to have had adjudicated upon each appeal independently or discussed facts and grounds of appeal of each case independently. The appellate authority ought to have taken into consideration the grounds raised in the appeal by the present petitioner and returned its findings

on the same vis-a-vis the order under challenge as also the pleadings on record. This Court deprecates the manner in which the appeals were decided by learned Appellate Authority as the process of adjudication does not contains any semblance of fair adjudication. The process adopted by learned appellate authority defies basic principles of law that justice should not only be done but also seen to have been done.

9. Accordingly, this petition is allowed and the order dated 06.05.2014 (Annexure P-8), passed by learned Divisional Commissioner, Mandi Division, in the case of present petitioner, i.e. Appeal No. 213 of 2012, titled as Shyam Singh, son of Shri Lehanu Ram versus A.E. HPPWD Sub Division No. 2 J/Nagar, is set aside and the appeal is remanded back to the learned Divisional Commissioner with the direction to decide the same afresh after hearing the parties concerned, in accordance with law.

10. It is clarified that this Court has not made any observation on the merit of the case and the appeal shall be decided by the learned Divisional Commissioner on the basis of material before it. Pending miscellaneous application(s), if any, also stand disposed of.