
(2015) 09 SHI CK 0134

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 186 of 2004

State of Himachal Pradesh

APPELLANT

Vs

Rangila Ram and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Citation : (2015) 3 ShimLC 1760

Hon'ble Judges : Rajiv Sharma, J.

Bench : Single Bench

**Advocate : Parmod Thakur, Additional Advocate General, for the Appellant;
Rajnish K. Lall, Vice Counsel, for the Respondent**

Final Decision : Partly Allowed

Judgement

Rajiv Sharma, J.—This Regular Second Appeal has been instituted against judgment and decree dated 30.11.2002 rendered by learned District Judge, Hamirpur, (HP) in Civil Appeal No. 12 of 1995. "Key facts" necessary for the adjudication of the present appeal are that respondent No. 1-plaintiff (hereinafter referred to as "plaintiff for convenience sake) has filed a suit for declaration against the appellant and proforma respondent No. 2 Lohki Devi. Case of the plaintiff is that he was owner-in-possession of the land as detailed in the plaint measuring 32 Kanal 4 Marla. Gram Panchayat has passed resolution dated 13.6.1970 for cutting grass from Khasra Nos. 418, 428, 429, 650, 655 and 656 measuring 26 Kanal on payment of Rs. 7/- per year. He applied for permanent Nautor land comprising Khasra Nos. 418, 428, 429, 655 and 656 to the Deputy Commissioner, Kangra under Kangra Nautor Rules in the Gram Panchayat Bajuri and Gram Panchayat passed a resolution No. 29 on 12.4.1971. Case of plaintiff was recommended to the Deputy Commissioner. Deputy Commissioner, after completing all the codal formalities, allotted land in favour of the plaintiff vide Order dated 18.2.1972 vide Ext. P.W.-7/A. The Gram Panchayat Bajuri vide resolution No. 29 dated 12.3.1972 authorised Shri Amin Chand, Sarpanch to get the mutation attested in favour of the persons, who have been granted Nautor

land including plaintiff. Forest Department also assessed compensation to the tune of Rs. 30/-. Plaintiff also paid Rs. 22.50. A sum of Rs. 20,000/- has been spent to make land cultivable. He also constructed a residential house, a cow shed over the suit land. However, after coming into force of the HP Village Common Land (Vesting and Utilization) Act, 1974, entire Shamlat land in village Daruhi was mutated in favour of the State vide mutation No. 527. Plaintiff also contested this mutation. State without any authority allotted a part of suit land comprised in Khasra No. 1417/655/2 measuring 17 Maria out of Khasra No. 1417/655 and Khasra No. 1421/656/1 measuring 1 Kanal 2 Maria out of Khasra No. 1421/656 and got mutation No. 724 attested in favour of proforma defendant on 26.5.1982. This mutation was also challenged by the plaintiff. Other similarly situate persons were also granted permanent Nautor by the Deputy Commissioner in Tikka Mathianak, Daruhi by the Deputy Commissioner Kangra, with the consent of Gram Panchayat and mutations were also attested in his favour.

2. Suit was contested by the defendant-State. Factum of grant of Nautor land in favour of plaintiff was denied. Plaintiff filed replication. Issues were framed by the learned Sub-Judge 1st Class on 14.6.1989. He decreed the suit on 21.10.1994. State preferred an appeal before the learned District Judge, against the judgment and decree dated 21.10.1994. Learned District Judge dismissed the appeal on 30.11.2002. Hence this appeal.

3. The Regular Second Appeal was admitted on 11.6.2004 on the following substantial question of law:

"Whether Nautor granted under the erstwhile Kangra Nautor Rules, 1948 confers ownership rights on the allottee or is simply a licence to permit the individual to use the land for the purpose specified in the grant?"

4. Mr. Parmod Thakur, Additional Advocate General, Advocate on the basis of substantial question of law framed, has vehemently argued that Nautor granted under the erstwhile Kangra Nautor Rules, 1948 does not confer right of ownership, it is simply a licence to permit an individual to use the land for the purpose specified in the grant.

5. Mr. Rajnish K. Lal, vice Counsel has supported the judgments and decrees passed by the learned Courts below.

6. I have heard the learned Counsel for the parties and also gone through the record carefully.

7. Plaintiff has appeared as P.W.-8. According to him, he submitted an application for the grant of suit land as Nautor. Nautor was granted in his favour vide Ext. P.W.-7/A. He deposited a sum of Rs. 30 and Rs. 23.50 vide receipt Ext. P.W.-7/B and Ext. P.W.-7/C, respectively. He made the land cultivable. He spent Rs. 20,000/- for improvement of land. According to him, Shri Pritam Chand, Kishori Lal, Kali Dass, Madho Ram and Kalan Devi have also been granted permanent

Nautor like the plaintiff and mutation was attested in their names. He also admitted that Nautor was also granted to defendant No. 2 Lohki Devi but he had not handed over possession of the same. He again appeared in the witness box as P.W.-10. He admitted his signatures on Ext. P.W.-9/F and Ext. P.W.-9/E. Application was submitted by him to the Deputy Commissioner as landless person.

8. P.W.-1 Kishori Lal, P.W.-5 Chhaildin have corroborated the statement of P.W.-8. According to them, permanent Nautor was granted in favour of the plaintiff by the Deputy Commissioner. He has also constructed his house. P.W.-1 has supported the case of the plaintiff by stating that he has paid compensation and Nautor land was allotted to him. P.W.-4 Shanti Swaroop has produced the record and as per his testimony, suit land initially was given on lease to the plaintiff which was Banjar, however, land was made cultivable. There was no record pertaining to the ejectment of the plaintiff from the suit land. P.W.-6 Ishwar Dass produced and proved resolution Ext. P.W.-6/A to Ext. P.W.-6/F passed by Gram Panchayat Bajuri from time to time regarding allotment of Shamilat land to right holders including plaintiff and others. P.W.-7 Porkhi Ram deposed that ejectment proceeding were not initiated against plaintiff. There were 20-25 other right holders. Dhian Singh, P.W.-9 Office Kanungo proved Ext. P.W.-9/I to Ext. P.W.-9/J and Ext. P.W.-9/M/A and Ext. P.W.-9/M/B. According to these documents, application of the plaintiff was processed at various levels and thereafter, order Ext. P.W.-7/A dated 18.2.1972 was passed. P.W.-11 Mali Ram deposed that he has processed the plaintiff's case for grant of Nautor. He has admitted his signatures of DFO on Ext. P.W.-9/B and Ext. P.W.-9/C qua which recommendation was made to the Deputy Commissioner, Kangra for grant of suit land as Nautor. Defendants have not led any oral evidence.

9. Mr. Rajnish K. Lall, Advocate has drawn the attention of the Court to the Kangra Nautor Rules, 1948. Rule 3 of the same reads as under:

"3. Grant of Nautor shall be made only to a right holder provided that the grant shall not be made in the case of Shamilat.

(1) to a person who has or whose predecessor-ininterest have received grants of Nautor within the preceding five years.

(2) of a an area which exceeds the applicant's share in the shamilat.

10. According to Rule 4, Nautor is granted for subsistence, construction of house, Gharat or Kuhl, (Water channel) or such other purposes as may be approved by Government from time to time. Rule 9 provides that application for grant of Nautor shall lie to the Deputy Commissioner, Kangra. Application shall be accompanied by a copy of the latest Jamabandi entries and of the Shajra or, the Tatima (as the case may be) and shall contain the following particulars:

(i) The nature and extent of the applicant's rights in the land.

(ii) The purpose for which grant is sought.

- (iii) Total area class wise owned by the applicant. Area cultivated by him personally and through tenant.
- (iv) Number of members of the family dependant on the applicant.
- (v) Area previously obtained as Nautor and the year of grant.
- (vi) Number and kind of trees if any on the land.
- (vii) Whether the applicant is willing to pay the market price of the government trees in the case of grant.
- (viii) Whether the area is near any public path, road, government building or water channel or is used as Charand or Sindh Dehak or not.
- (ix) Whether Kacha bounary marks have been fixed on the spot.
- (x) Grounds on which he basis his claim for the grant.

11. Therefore, as per Rule 10, Deputy Commissioner is required to forward it for enquiry and report to the revenue officer in whose jurisdiction the land to which it relates lies. According to Rule 10(2), revenue officer shall either inquire into himself or may cause inquiry through Girdawar Kanungo. Thereafter, he is required to submit a report after inspection of the spot and checking Tatima Shajr. Report is required to state inter alia as under:

- (a) in case of shamilat.
 - (i) Number of share holders
 - (ii) number of share holders agreeing to the grant.
 - (iii) number of share holders who object to the grant.
 - (iv) number of share holders who remained absent.
 - (v) The area of the applicant's share in the shamilat.
- (b) in case of other land.
 - (i) The nature of bartan rights attached to the land.
 - (ii) the purpose of the grant.
 - (iii) the remaining area left with the right holders for the exercise of bartan rights.
- (c) In either case the reasons for recommending or rejecting the application.

12. Before submitted the report, revenue officer is also required to give opportunity to forest society, if any, in the estate to express its opinion. Thereafter, the revenue authorities are required to send the recommendations to the Deputy Commissioner as per Rules. The Deputy Commissioner after receipt of such recommendations of revenue officer is required to consult the Divisional Forest Officer. Divisional Forest Officer is required to look into the application

from various points through range officer. The range officer is required to send his report to the Divisional Forest Officer. Thereafter, Divisional Forest Officer is required to send the application to Deputy Commissioner with his remarks. The Deputy Commissioner, thereafter has to make sanction and thereafter send the file for recovery process to Divisional Forest Officer for price of trees, if any, for recovery. File is to be returned to Deputy Commissioner and he is required to thereupon take steps for mutation in the revenue papers. Tehsildar after making mutation is required to inform Divisional Forest Officer of the particulars of the area in which Nautor land has been granted and is required to get entries incorporated in Ban Sarkar Register.

13. Plaintiff has made application vide Ext. P.W.-9/F on the prescribed format for the grant of suit land as "permanent" Nautor, to the Deputy Commissioner. Deputy Commissioner Kangra got processed the plaintiff's case through forest department also. Case of the plaintiff was recommended by the Divisional Forest Officer for grant of Nautor land, plaintiff has paid Rs. 30/- per month as compensation. Plaintiff has deposited compensation amount through challan, Ext. P.W.-9/A. Patwari Halka vide Ext. P.W.-9/H on 29.9.1971 has certified that the plaintiff is a landless person having no land in his name. Report of Divisional Forest Officer Ext. P.W.-9/C. Panchayat has passed resolution vide Ext. P.W.-6/A to Ext. P.W.-6/F recommending case of the plaintiff to the Deputy Commissioner to increase production of foodgrains. Panchayat has also passed resolution vide Ext. P.W.-6/E authorising Pradhan to get mutation attested in favour of persons including plaintiff. Rapat Rojnamcha Ext. P14 was entered. Ext. P.W.-7/A substantiated the case of the plaintiff that he was granted Nautor vide document Ext. P.W.-7/A on receipt of Rs. 22.50 deposited with the Gram Panchayat. Land stood vested in the state Government after coming into force of the HP Village Common Land (Vesting & Utilization) Act, 1974. Mutation No. 496, Ext. P13 was sanctioned on 19.8.1975 in favour of the State. However, in the remarks column, entries qua suit land having been mentioned in favour of plaintiff were recorded.

14. Portion of suit land was also given to defendant No. 2 and mutation No. 724 on 26.5.1982 was attested. Land has been sanctioned in favour of plaintiff after completing all the codal formalities under Kangra Nautor Rules.

15. However, there is merit in the contention of Mr. Parmod Thakur, Additional Advocate General that land could only be leased under the Punjab Village Common Land (Regulation) Act, 1961. He has drawn the attention of the Court to Ext. P.W.-7/A. It is evident from the copy forwarded to the Sarpanch of Panchayat Bajuri that the land was declared fit for cultivation and the Panchayat could lease out the land for cultivation in accordance with provisions of Punjab Village Common Land (Regulation) Rules, 1964. Thus, the appellate Court has come to a wrong conclusion that it was a "permanent" Nautor granted under Kangra Nautor Rules. Panchayat could only lease out the land in question to the plaintiff after completing all the codal formalities. The fact that mutation was to be entered as per Rule 15 of the Kangra Nautor Rules, after sanctioning of the

land, would not make plaintiff "permanent" owner of the land.

16. The land was a village common land and initially it was regulated under Punjab Village Common Land (Regulation) Act, 1961 and after coming into force of the HP Village Common Land (Vesting & Utilization) Act, 1974, it has vested in the State of Himachal Pradesh. Collector, under sub-section 1 of Section 4, is authorised to call for record from Panchayats in his District, the record of leases, contracts or agreements entered in to by the Panchayats in respect of any land vested in the Panchayats under the Punjab Village Common Land (Regulation) Act, 1961 and the rules framed thereunder and examine such record for satisfying himself as to the legality or propriety of such leases, contracts or agreements.

17. So far as land sanctioned/mutated in favour of defendant No. 2-Lohki Devi is concerned, same is contrary to law. Once said land has been allotted/sanctioned in favour of plaintiff, under Kangra Nautor Rules, same could not be sanctioned in favour of defendant No. 2. Findings of the learned Courts below to this effect are upheld. The substantial question of law is answered accordingly. Findings recorded by the learned first appellate Court that land sanctioned in favour of the plaintiff was permanent, are contrary to law. Accordingly, Regular Second Appeal is partly allowed. Findings given by learned appellate Court that the land granted in favour of plaintiff was of permanent nature, are set aside. Collector, Hamirpur is directed to complete all the codal formalities in sequel to order Ext. P.W.-7/A and to give land on lease to the plaintiff and to put him in possession of the suit land, within eight weeks, from today. It is clarified by way of abundant precaution that the land allotted in favour of respondent No. 2 is contrary to law.

Pending application(s), if any, also stand disposed of. No costs.