
(2020) 04 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 287 Of 2001

Sudama Ram Sharma

APPELLANT

Vs

State Of Himachal Pradesh And Others

RESPONDENT

Date of Decision : 27-04-2020

Acts Referred:

Citation : (2020) 04 SHI CK 0006

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

Advocate : Sanjeev Bhushan, Mohan Singh, Abhilasha Kaundal, Ashwani K. Sharma, Nand Lal Thakur, Naresh K Gupta, G.D. Verma

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

All these cases bearing Nos. CWP No. 54 of 2019, CWP No. 654 of 2000, CWP No. 287 of 2001, RSA No. 452 of 2007, RSA No. 459 of 2007 and

FAO No. 315 of 2002, were heard together and are being decided simultaneously.

However, this Court is passing separate detailed judgments in each of these cases.

2. Seeking various reliefs, all revolving around the sanction of the additional building plan by Municipal Corporation Shimla in favor of 5th respondent,

the Petitioner, whose land is adjacent to the property of 5th respondent, has come up before this Court asking for issuance of Mandamus by quashing

not only the building plan (Annexure P-9) but also restoration of status quo ante for his demolished railing, and preparation of new field map.

3. The petitioner claims to be an owner in possession of land measuring 5 Biswas described in khasra no. 357 (Old 190), situated in Revenue village

Bagog, (Near Summerhill), Tehsil and District Shimla, HP. As per the counsel for the petitioner, this land was purchased vide sale deed dated 21 Nov

1986, and the mutation was attested on 24 Nov 1986. The 5th Respondent Sh. Ravinder Parkash and his wife, Smt. Surekha, the 6th Respondent, are

the owners in possession of the adjoining land, measuring 1-12 bighas (32 Biswas), described in khasra nos. 353 and 354 (Old 189), in the same

revenue village. As per the counsel for the 5th and 6th respondents, they had purchased the land vide sale deed dated 1 July 1987.

4. I have heard the counsel for the parties and have gone through the entire record, including the written arguments filed by the Petitioner.

5. The reliefs claimed by the petitioner falls in the following three categories:

A. DISPUTE PERTAINING TO FENCE:

6. The Petitioner claims that the 5th Respondent had erected an iron fence between their boundaries, after proper demarcation done on 28-08-1990

and 9-11-1990, vide Annexures P-5 & P-6. However, the 5th Respondent claimed that the land beyond this fence also belongs to him. The Petitioner

further contended that the 5th Respondent demolished the said iron fence through his Contractor, paving the way for the extension of his existing building.

7. Placing reliance upon the admission made by the 5th respondent vide Annexure P-5 and P-6, whereby he had admitted his satisfaction over the

boundaries fixed and boundary posts erected by the Revenue officials, the Petitioner contends that he cannot blow hot and cold over the admissions once made.

8. The 5th respondent contended that he had raised an iron fence, but taking advantage of his absence, due to his posting, the petitioner demolished the said fence on 16.2.2000, which led to the registration of an FIR against him.

9. The case set up by the 5th and 6th respondents is specific to the extent that a civil suit no. 199/1of 1995/1991, filed by them against the petitioner,

about the encroachment was pending between the parties at the time of filing of the present writ petition. Thus, the present writ petition, for a similar relief is not maintainable.

10. To decide the dispute about the removal of iron fence, needs evidence, by examining witnesses, for which the writ Court is not an efficacious

remedy. Consequently, this Court refrains itself from issuing such writ, because the controversy involves disputed questions of facts.

B. ERRONEOUS SETTLEMENT PLANS :

11. The petitioner pleaded that the 5th respondent lays his claim over the land adjoining his land, based upon erroneous field maps of Settlement

Authorities, the 4th respondent herein. The response of the 5th respondent is that the petitioner is an encroacher over his land. While admitting the

ownership of the petitioner over the land described in khasra no. 357, the 5th respondent alleged that the petitioner had built a portion of his house over

the land belonging to him.

12. The stand of the Settlement Collector, the 4th respondent, on the Affidavit is that the Tehsildar Settlement had correctly prepared the Tatima

Tafawat, according to the demarcation dated 15.9.1997. In the Paras 5&6 of the Sur-rejoinder, the Settlement Officer, on Affidavit stated that

Tehsildar Settlement had found encroachment by the Petitioner over the land of the 5th respondent over khasra no. 189/1, to the extent of 09 biswansi.

13. Given the Affidavit filed by the Settlement Officer, the issue involves disputed questions of fact. Resultantly, this Court is not inclined to decide the

disputed questions of facts in its writ jurisdiction.

C. DISPUTE PERTAINING TO BUILDING SANCTION PLAN:

14. The Petitioner claims that the 5th Respondent applied for additional building plan over the land, which was beyond the iron fence, claiming the

same to be in his ownership. The Petitioner further pleaded that the land over which the 5th Respondent sought additional building plan belonged to the

Petitioner.

On coming to know about such a plan, the Petitioner sent his objections (Annexure P-7) to the Municipal Corporation, Shimla, the 3rd Respondent,

herein. However, without hearing him, the Municipal Corporation, Shimla gave permission (Annexure P-9), to the 5th Respondent to go ahead with the

construction as per the amended and altered building plan.

15. The grievance of the Petitioner is that the sanction plan Annexure P-9, allows the 5th Respondent to construct up to 4.5 meters from his existing

building towards the Petitioner's house. His further case is that there is not that kind of space available between these buildings, and there is only

one meter of setback between the existing boundary and the current structure of the 5th Respondent.

16. The 5th respondent submitted that if the petitioner had any grudges against the sanction, then the remedy lay in filing the appeal/revision, and not

by invoking the writ jurisdiction. The 5th respondent further contended in Para 8 that under the new sanctioned plan, the building that he proposes to

construct would not intrude the land under the existing structure or the staircase of the petitioner.

17. In Para 10 of the reply, the 5th respondent claimed that it is for him to leave or not to leave any setbacks in his land, and it is none of the concerns

of the petitioner.

18. The Municipal Corporation, the 3rd respondent, filed its reply supported by an affidavit of its Commissioner. The Reply affidavits state that its

concerned Junior Engineer had inspected the spot and noticed that the construction was going in as per sanctioned plan. The affidavit further reads

that the proposal of the 5th respondent for sanction of the additional building was as per the Municipal Corporation Act, its Byelaws, and based upon

the revenue records submitted along with the application. The petitioner had also shown the setbacks.

19. Given the affidavit filed by the Commissioner, Municipal Corporation, Shimla, it is clear that the sanctioned plan is on the land, which as per

revenue records and physical inspection of the site, is owned and possessed by the 5th and 6th respondents, and does not belong to the Petitioner.

20. It is a fundamental law that the Municipal Corporation Shimla, and for that matter, any sanctioning authority of building plans, can sanction plans

only if the building proposed to be constructed, falls squarely on the land over which the applicant has undisputed rights to raise such structure. Those

rights may be by way of no-objection certificates of other co-owners, or persons whose names reflect in the revenue records in the column of

possession. The only exception to this rule of law is the areas wherein the revenue records mention the land as Abadi Deh, etc. The sanction of any

building plan neither confers ownership nor any other rights over the land beneath the structure, or the structure itself. Even after the permission, or

approval, or completion plan of any such structure or building, if it's any portion, in any subsequent demarcation comes under the land, which is

beyond the area mentioned and described in such sanction/approval/ completion plan, then all such portions of the structure beyond the approved plan

shall deemed to be unauthorized, notwithstanding such sanction or final approval, by any authority whom so ever. The remedy to this would lie in

acquisition of ownership or similar rights over such land in accordance with law, and provided the rules permit the sanction of plan.

21. Consequently, because of the affidavits of the Settlement Officer and the Commissioner, Municipal Corporation, Shimla, wherein the said building

plan was over the land owned and possessed by the 5th and 6th respondents, the Petitioner has no cause of action to challenge the plan Annexure P-

9. Given the above analysis and reasoning, the writ petition fails and is dismissed. All pending applications, if any, are closed.