

(2020) 04 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 654 Of 2000

Surekha

APPELLANT

Vs

Municipal Corporation, Shimla Through Its Commissioner And
Others.

RESPONDENT

Date of Decision : 27-04-2020

Acts Referred:

Himachal Pradesh Municipal Corporation Act, 1994 — Section 268

Citation : (2020) 04 SHI CK 0005

Hon'ble Judges : Anoop Chitkara, J

Bench : Single Bench

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

Final Decision : Disposed of

Judgement

Anoop Chitkara, J

The 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. Petitioner who is co-owner of the land comprising khasra Nos.

353, 354, NEW (Old Number 189), measuring 1231.37 Sq.Mts. which equals to 33 biswas in village Bhagog, Summerhill, Tehsil & District Shimla, has

come up before this Court asking for the following substantial reliefs:

â??(I). By issue of writ of Mandamus or other suitable writ, direction or order the Respondent No. 1, that is Municipal Corporation Shimla may be

ordered to complete the proceedings stated under section 268 HP M C Act against Respondent 4 vide Annexure P-B dated 18-9-1991 typed copy

Annexure P-C within a short and definite time frame and also to ensure that respondent No. 4 restores the iron railings of the main road which he had removed to gain access to land bearing Khasra No. 355 New and to further ensure that he does not carry out any digging or excavation on his land.

Respondent No. 4 may be further ordered to withdraw the electricity and water connection granted to him for his unauthorized structure.

(II) By issue of appropriate writ, direction or order, the respondent No. 3 may be ordered to ensure that respondent No. 4 does not carry out any

digging, excavation, or encroachment upon land bearing Khasra No. 355 Old 192 New Village Bagog, Summerhill, Tehsil and District Shimla.â??

3. The 2nd respondent, Director Town and Country Planning, State of Himachal Pradesh, Shimla, filed a reply-affidavit to the writ petition on Nov 1,

2000, in which it was explicitly mentioned in paragraph-6 that they had granted sanction to the 4th respondent Sh. Sudama Ram vide letter dated Jul 3,

1990 on the basis of the documents submitted by him. In paragraph-7 the 2nd respondent further stated that they had cancelled such sanction vide

order dated Jul 08, 1991 in view of order dated Jun 01, 1991 passed by the Assistant Settlement Officer.

4. The 3rd respondent, Secretary Revenue, Government of Himachal Pradesh, also filed reply-affidavit to the writ petition on Dec 07, 2000, in which

they explicitly mentioned that the 4th respondent Sh. Sudama Ram had conspired with the Patwari and had fabricated revenue document, by showing

the path leading to the plot, on which he had sought sanction to construct his house. The response further states that vide order dated Jun 01, 1991

passed by the Assistant Settlement Officer, Shimla in Case No. 6/91 the said entries depicting the path have been ordered to be deleted.

5. The 1st respondent, Municipal Corporation, Shimla, filed its reply on Dec 04, 2000, in which in paragraph -7 they explicitly stated that they had

revoked the sanction granted to respondent No. 4 on Sep 13, 1991. In paragraph â?" 9 of the response-affidavit, the Commissioner of M.C. Shimla

stated that they could not initiate proceedings against the 4th respondent Sh. Sudama Ram under Section 268 of the M.C. Act because of the

pendency of the Civil Writ Petition in this Court which is CWP No. 126 of 1995, titled Sudama Ram vs. State of Himachal Pradesh & others.

6. Before advertng to the response of the 4th respondent, it would be appropriate to state that the said CWP No. 126 of 1995, stood decided vide

judgment dated May 29, 2003 (Annexure R4/O). It appears that the said judgment has attained finality. This Court had quashed the Annexures P-6

and P-7, which relate to the withdrawal of the sanctions granted to the 4th respondent. This Court while quashing the orders of revocation of sanction

held as follows:

â??In the present case as well, in view of the admitted fact that no reasonable opportunity was afforded by the respondents 3 and 4 to show cause

against the withdrawal/cancellation of the permission earlier granted in his favour, the orders withdrawing/cancelling the permissions as contained in

Annexures P6 and P7 passed by respondents No. 3 and 4 are bad and cannot be sustained.

As a result, the present writ petition is allowed and the orders as contained in Annexures P6 and P7 are quashed and set aside. The parties are left to

bear their own costs.

Before parting, it may be stated that the quashing of the orders as contained in Annexures P6 and P7 by this order will not in any manner preclude the

respondents from re-considering the question of withdrawing/cancelling the requisite permission granted in favour of the petitioner vide Annexures P3

and P4 in accordance with law and in the light of the observations made above.â??

7. The 4th respondent Sh. Sudama Ram in response to the writ petition raised preliminary objections and stated that all the points raised in the present

writ petition are also grounds in Civil Suit filed against him in the year 1991, vide Civil Suit No. 199/1 of 1995/91. The 4th respondent further submitted

that the learned Sub Judge (I), Shimla, vide judgment and decree dated Dec 22, 1999 in Civil Suit No. 199/1 of 1995/91 had rejected the plaint seeking

demolition of his building allegedly constructed in an unauthorized manner. In paragraph â?" 3 of the preliminary objections the 4th respondent further

submitted that because of the above judgment (Annexure R-4/A) the lis between the parties already stands decided and the present prayers are

barred by the principle of res judicata, and as such, this petition is legally not maintainable The 4th respondent further claimed that he has no other

approach road towards his house except the path in question and as such he has acquired easementary rights over it. Paragraph â?" 4 of the

preliminary objections, is extracted as follows:

4. That the petitioner has no legal or fundamental right to restrain the replying respondent from using the path over the Govt. land to reach up to his plot/building. In fact there exists an age old path over the adjoining Govt. land which is used by the general public and which is also recorded as the Bartan-Bartandaran in revenue record, a copy of which is annexed herewith as Annexure R-4/B. Besides, there is no other approach path save and except the one over Govt. land pertaining to Khasra No. 192 (old) corresponding to 355 (new) and therefore, the replying respondent has also acquired easement of necessity for using the said path over Govt. land to reach his plot/building.

8. In reply on merits, the stand taken by the 4th respondent is that the path which leads to the plot was an approved road. In paragraph 9 of the reply the 4th respondent has explicitly stated that this Court was seized of the matter in CWP No. 126 of 1995 (Sudama Ram, supra), as such, the present petition was not maintainable because similar matter was sub judice.

9. I have heard Sh. G.D. Verma, learned Senior Counsel, assisted by Mr. B.C. Verma, Advocate, for the petitioner, Mr. Naresh K. Gupta, learned Counsel for respondent No. 1, Mr. Ashwani K. Sharma & Mr. Nand Lal Thakur, learned Additional Advocate Generals for respondents No. 2 & 3 and Mr. Sanjeev Bhushan, learned Senior Counsel, assisted by Mr. Mohan Singh & Ms. Abhilasha Kaundal, Advocates, for respondent No. 4, and have also waded through the record.

10. In this matter, which has a chequered history, a Co - ordinate Bench of this Court vide order dated Nov 16, 2010, passed the following order:

CWP No. 654 of 2000

Arguments were heard for about two hours and I find that there is a long standing litigation between the two parties with respect to a path. To appreciate the rival contentions of the parties and with a view to put an end to all the disputes, I feel that it would be appropriate if I visit the spot personally. I shall visit the spot at 4.30 p.m. on 22.11.2010.

Sh. Vivek Singh Thakur, learned Additional Advocate General is directed to ensure that the Naib Tehsildar, Kanungo and Patwari of the area as well

as the forest officials who are well conversant with the area are present on the spot at the given time. The parties and their counsel are also directed

to be present at the spot on 22.11.2010 at 4.30 p.m.

11. Pursuant to the said order the Honâ??ble Single Judge of this Court inspected the spot and recorded the spot visit in his order dated Nov 23, 2010.

12. To close the matter at this stage would although, do the Justice in â??Letterâ?? but not in its â??Spirit.â?? However, to do the substantial Justice, it is pertinent to mention the great efforts put by a single co-ordinate Bench of this Court a decade ago. On 22-11-2010, the Honâ??ble Judge of this Court visited the spot.

Vide order dated 23-11-2010, in CWP No. 654 of 2000 along with CWP No. 287 of 2001, FAO No. 315 of 2002, RSA No. 452 of 2007 and RSA No.

459 of 2007, Honâ??ble Court recorded all the proceedings of spot visit. This order reads as follows:

â??1. Pursuant to the order dated 16.11.2010, I had visited the spot on 22.11.2010 at 4.30 p.m. when the following were present:

Shri G.D. Verma, Senior Advocate alongwith Sh.Ravinder Parkash Verma husband of Smt.Surekha.

S/Sh.Sanjeev Bhushan and Mohan Singh, Advocates alongwith Sh.Sudama Ram.

S/Sh.K.L. Bali & Shrawan Dogra, Advocates alongwith officers of the Municipal Corporation S/Sh.Joginder Chauhan, Legal Advisor, R.C. Thakur,

Architect Planner, N.S. Guleria, Assistant Engineer and Hem Raj, Junior Engineer.

Sh.Rajesh Mandhotra, Dy.A.G. alongwith forest officials S/Sh.Sushil Kapta, DFO, Gobind Singh Bali, Kanungo, Manohar Singh, Deputy Ranger, Mani

Ram, Forest Guard, Shambu Dayal, Junior Assistant, Ms.Neelam Kumar, Patwari AND Revenue officials S/Sh. M.R. Bhardwaj, Tehsildar (Urban),

Sh.Bishan Singh Thakur, Kanungo and Sh.Krishan Sharma, Kanungo.

2. After visiting the spot I found that the dispute falls within a very narrow compass. In my opinion, this entire dispute can be resolved easily. There

are four stake holders involved. Firstly, the State Forest Department which admittedly owns some land which falls below the mettled pucca road

commonly known as â??M.I. Roadâ? and above the house of Sh.Ravinder Parkash Verma. There exists a path from the M.I. Road through forest

land leading to the house of Shri Sudama Ram. The question whether this path existed at the time when sanction was granted in favour of Sh.Sudama

Ram and whether he has any right over it shall be decided later on. However, as observed by me, as on date there is a path on the spot about 4 to 5 ft.

wide which goes to the house of Sh.Sudama Ram above the house of Sh.Ravinder Parkash Verma. This path is a kacha path and there are Deodar

trees on both sides of the path. As one walks on this path from the M.I. Road towards the house of Sh.Sudama Ram the land of Sh.Ravinder Parkash

Verma and Smt.Surekha Verma touches the forest land on the left hand side. One Deodar tree was found fallen on the spot. It had in fact been cut

and mostly removed. I was informed by the Revenue Officials that they had conducted demarcation and this tree fell in the land owned by the Forest

Department. This fact was not seriously disputed by Sh.Ravinder Parkash Verma. On the edge of the boundary of the land of Shri Ravinder Parkash

Verma, as pointed out to me on the spot, about 4 water tanks had been installed and when I inquired whether the land on which these water tanks

were installed is forest land or land belonging to Sh.Ravinder Parkash Verma, the revenue authorities stated that it is a forest land and Sh.Ravinder

Parkash Verma stated that if after demarcation it is found to be forest land he will remove the water tanks.

3. I also found that Sh.Ravinder Parkash and his wife had raised steps with railings on the back side of his house. Though I was informed by

Sh.Ravinder Parkash that this is a retaining wall and not a staircase but to the naked eyes it is apparent that these were steps and not a retaining wall.

4. In between the house of Sh.Ravinder Parkash Verma and Sh. Sudama Ram there are steps leading to the lower storey of the house of Sh.Sudama

Ram. The house of Sh.Ravinder Parkash Verma can be divided into two portions one the old portion which is obviously constructed many years back

and second portion in which construction is still going on. A portion of the new construction virtually touches these steps or are very close to the steps.

On the valley side the house of Sh.Ravinder Parkash Verma is being constructed in a triangular fashion and the corner of the triangle is barely at a

distance of 2/3 ft. from the edge of the house of Sh.Sudama Ram.

5. The boundary of the property of Sh.Sudama Ram on the other side of his house is slightly unclear because one â??Burjiâ? is alleged to have been

fixed by one Col.Behal close to the house of Sh.Sudama Ram.

6. I was also informed that in settlement proceedings there has been some shifting of the map and â??karukansâ? have changed. There is a mettled

road on one side of the land of Sh.Ravinder Parkash Verma. There is forest land

on one side and there is a road leading to the Government School on the third side. Though new buildings of the school have been constructed but I am told that this Government School has been in existence for a very long time much before Sh.Sudama Ram and Sh.Ravinder Parkash Verma purchased their properties. No doubt the old building of the School does not exist but the boundaries of the School are the same .

7. Keeping in view the aforesaid facts, I direct the Tehsildar (Urban) Shimla to conduct fresh demarcation of the property. This demarcation will be conducted on or before 31.12.2010 in the presence of the parties and in the presence of the officials of Municipal Corporation as well as the forest officials. Therefore, notice of said demarcation will be given by the Tehsildar (Urban), Shimla to the learned counsel for the parties and not the parties themselves and it was the responsibility of the counsel to inform the parties of the date. The counsel are Sh.Romesh Verma, counsel for Sh.Ravinder Parkash Verma and Smt.Surekha Verma, S/Sh.K.L. Bali and Shrawan Dogra, counsel for Municipal Corporation, S/Sh.Sanjeev Bhushan and Mohan Singh, counsel for Sh.Sudama Ram, and Sh.Rajesh Mandhotra, Dy.A.G. for State. While demarcating the land the Revenue officials shall ensure that pucca points are fixed and demarcation is carried out in accordance with the instructions issued by the Financial Commission as approved by the High Court in Chapter-1 Part-M of the High Court Rules and Orders.

8. The Revenue officials shall first demarcate the forest land and clearly indicate the boundary of the forest land with the land of Sh.Ravinder Parkash Verma and Sh.Sudama Ram. The Revenue officials shall clearly indicate whether the water tanks and the retaining wall in the form of steps falls in forest land or in the land of Sh.Ravinder Parkash Verma and Smt.Surekha Verma. It shall also be clearly indicated as to whether the steps leading from the rear of the house of Sh.Ravinder Parkash and in front of the house of Sh.Sudama Ram to the lower storey of the house of Sh.Sudama Ram fall in the land of Shri Sudama Ram or Sh.Ravinder Parkash Verma.

9. The Revenue officials shall also calculate the area of land in the possession of Sh.Ravinder Parkash Verma and Smt.Surekha Verma, both built up and vacant. They shall also calculate the area in the possession of Shri Sudama Ram both built up and vacant. The boundary of the school shall be identified with the help of permanent pucca points and the help of school officials

so that there is no dispute later.

10. In the demarcation the distance between the trees which have fallen and which are standing from the houses of Sh.Ravinder Parkash Verma and

Sh.Sudama Ram will be indicated in clear-cut terms.

11. The Commissioner, Municipal Corporation shall also on or before the next date file an affidavit on the following issues:

I) What were the norms relating to set-backs when the plan(s) of Sh.Sudama Ram and Sh.Ravinder Parkash Verma & Smt.Surekha Verma were

sanctioned and what are the norms in this regard as on date.

ii) What were the norms relating to the distance from trees to construction when the plan(s) of Sh.Sudama Ram and Sh.Ravinder Parkash Verma &

Mrs.Surekha Verma were sanction and what are the norms in this regard as on date.

12. The Revenue authorities shall also clearly indicate what was the area owned by Sh.Ravinder Parkash Verma and Sh.Sudama Ram prior to

settlement and after settlement and how this area has changed. The Revenue officials shall clearly indicate how the change has been bought about in

the revenue record.

13. It is obvious that the dispute is more in the nature of the boundary dispute and therefore the revenue officials i.e. the Tehsildar (Urban), Shimla is

appointed to carry out demarcation in the aforesaid terms.

List on January 5, 2011. A copy of this order shall be sent by the Registrar General of this Court to the Tehsildar (Urban) Shimla, by hand, so as to

reach him within 48 hours. Dasti copy. â??

13. Vide order dated May 2, 2011, the co- ordinate Bench of this Court observed that the Tehsildar, Shimla had submitted its report.

14. A perusal of the report reveals that the Tehsildar visited the spot on 9. 2.2011. At the time of spot inspection Smt. Surekha, Shri Ravinder Prakash

and Mr. Sudama Ram were present. Apart from them, Mr. Tara Singh Kanwar, Range Forest Officer, Mr. N.S. Guleria, Assistant Engineer,

Municipal Corporation, Shimla, Mr. Hem Raj, Junior Engineer, Municipal Corporation, Mr. Jai Singh Garg, Superintendent, Government Senior

Secondary School, Summerhill and other Revenue Officials were present. After conducting the demarcation, the Tehsildar, reported as follows:

a) That on the spot Mr. Ravinder Prakash and Ms. Surekha had kept four water tanks, which were on the boundaries of Khasra No. 354 and 355.

Khasra No.354 is owned by Mr. Ravinder Prakash whereas Khasra No.355 is in the ownership of the State Government.

b) The stairs space behind the house of Mr. Ravinder Prakash were on Khasra No.353, which is in the ownership Mr. Ravinder Prakash and Smt.

Surekha.

c) The constructed portion of the building of Mr. Ravinder Prakash and Ms. Surekha was 176-48 square meters.

d) The constructed portion of Mr. Sudama Ram's building was 66-41 square meters.

e) Mr. Ravinder Prakash and Ms. Surekha have encroached upon the land of Education Department on Khasra No.358/2 measuring 23-45 square

meters, which is illegal encroachment.

f) Mr. Sudama Ram has also encroached upon the land of the State Government at Khasra No.358/1, measuring 29-69 square meters, which is illegal

encroachment.

g) Mr. Sudama Ram has encroached upon the land measuring 4-90 square meters on Khasra No.353/1, which is in the ownership of Mr. Ravinder

Prakash and Ms. Surekha, which is also illegal encroachment.

h) In comparison to the previous settlement, the total land of Mr. Ravinder Prakash and Mrs. Surekha increased to the extent of 26-21 square meters.

I) In comparison to the previous settlement, the total land area of Mr. Sudama Ram decreased by 4-04 square meters.

j) Mr. Ravinder Prakash and Ms. Surekha have expressed their full satisfaction and Mr. Sudama Ram has expressed his dissatisfaction to the

demarcation.

15. Despite devoting so much time and opportunity to resolve the controversy between the parties, the Court failed in its endeavour and that is how

this matter has come up before this Court for final hearing.

16. The only controversy involved in this matter is that the 4th respondent had taken permission to construct a building on his plot by showing that

there was an approach road to the said plot. However, as explicit from the response filed by the 3rd respondent, the Secretary Revenue, to the

Government of Himachal Pradesh, they had conducted inquiry and the Settlement Officer had found that the Patwari concerned had tampered with the Revenue Records and concocted the village map to show government land as road. The 4th respondent had challenged the said order of Assistant

Settlement Officer before the Divisional Commissioner who had upheld the same. Finally the 4th respondent again took the matter before the Financial

Commissioner (Appeals) who vide order dated Jun 6, 1995 upheld the order and also directed to bring the culprits to book for tampering with the

settlement records. The relevant portion of the order reads as follows:

“From the perusal of the record, it is noticed that interpolation, tempering with record and forgery was committed by the revenue field staff in the

Mussavi of village Bagog, more especially in khasra No. 355 (New) by carving out khasra No. 355/1 and showing it as GAIR MUMKIN RASTA in

the field book, Khatoni etc. This being criminal offence, therefore, it would be appropriate to bring these elements/culprits to book for which the

Settlement Officer or the Assistant Settlement Officer of the area may report the matter to the Appellate Authority.”

17. Given the findings of this Court in CWP No. 126 of 1995, wherein a co-ordinate Bench of this Court had observed that it shall be open for the

respondents to reconsider the question of withdrawing or cancelling the requisite permission in accordance with law and in the light of the observations

made in the said order, the prayers of the petitioner to the said extent becomes infructuous.

18. What the petitioner seeks from this Court is to restrain the 4th respondent from digging the government land. The petitioner pretends to take this

case as a public interest, whereas, the facts reveal that he is immediate neighbour having number of litigations, inter se, and as such it is certainly not

in public interest.

19. Be that as it may, it had come up in the report of the Tehsildar who had given the report pursuant to the spot inspection made by the co-ordinate

Bench of this Court that some portions of the government land were also encroached upon by the petitioner and her husband, as such, this petition is

disposed of by giving the following directions:

(a) As observed by the co-ordinate Bench of this Court in CWP No. 126 of 1995, titled as Sudama Ram vs. State of H.P. & others, respondents No.

1 and 2 shall re-initiate the inquiry regarding grant of sanction based upon the concocted road map which was set aside by the Financial Commissioner

and the said order has attained finality.

(b) While conducting the inquiry for revocation of sanction, the 1st and the 2nd respondents shall extend all the benefits to the 4th respondent which

were extended by various authorization policies/schemes issued by the Government from the date of the original sanction till date.

(c) Given the ground reality that Mr. Sudama Ram had purchased his land before the purchase of property by Mr. Ravinder Parkash and his wife

Mrs. Surekha; and Mr. Sudama Ram had constructed his building before 1990, and Mr. Sudama Ram and the other occupants of the building are

using this path for almost three decades. Consequently, to bring an end to all the disputes between the parties, and to do the substantial Justice, this

Court clarifies that it shall be open for the State Government/Central Government to change the nature and usage of the land being used as aforesaid

path and to authorize Municipal Corporation Shimla to declare this land as public path/road, provided the beneficiary Mr. Sudama Ram Sharma, or any

other person who subsequently acquires interest in the land/building, compensate the State of HP as well as the Central Government who are the

owners of the land in the revenue records, to the extent of their respective shares, which is allegedly used as the approach road to his house, by paying

the market value of the land utilized for dedicated to the road or used in the road, along with interest at the rate of 1% per month from the date of

assessment until its payment by Mr. Sudama Ram Sharma or his successors. At the time of assessment of market value, the State shall associate Mr.

Ravinder Parkash and consider his views as well as consider any valuation report placed by him, to determine the prevailing market price of the land

in issue. This Court hopes that the authorities of the Central and the State Governments shall take a lenient view in permitting Mr. Sudama Ram to use

this land as path/road towards his house keeping in view the fact that there is no other approach road to his house. It is further clarified that Mr.

Ravinder Parkash, Mrs. Surekha and their successors, shall be entitled to connect their property from this approach road, and the General Public shall

also be entitled to use this path, without any obstacle, hindrance or obstruction by any person, whomsoever.

(d) It is clarified that the 1st and the 2nd respondents shall pass a reasoned and self explanatory order by affording due opportunity to the 4th

respondent. Since this matter is very old as such the 1st and the 2nd respondents shall conclude the proceedings on or before Dec 31, 2020.

20. Mr.Ravinder Prakash and Mrs. Surekha are directed to remove their encroachments from the land of Government Senior Secondary School, Summerhill, if not already vacated, on or before 31st December, 2020 and shall ensure that no portion of their water tanks falls over the Government land.

21. Mr. Sudama Ram is also directed to remove his encroachment from the Government land on or before 31st December, 2020. However, there is

no record in any of the file to prove that at subsequent stage Mr. Sudama Ram had challenged the demarcation report dated 9.2.2011. In case he had

challenged the same then Mr. Sudama Ram shall abide by the final verdict of the said challenge, if any. However, if Mr. Sudama Ram did not

challenge the same, then because of lapse of time and on the grounds of limitation, despite Mr. Sudama Ram did not accept the demarcation report, it

has attained finality, even qua him. Subsequently, in either of the situation Mr. Sudama Ram shall remove all his encroachments from the Government

land as mentioned in the demarcation report or its final outcome, if any, on or before 31st December, 2020.

22. It is clarified that the above judgment has been passed keeping in view the spirit of law and not the letter of law.

Petition stands disposed of in the aforesaid terms. All pending applications, if any, are closed.