

(2012) 05 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : CWP No. 3269 of 2012 and CMP No. 4769 of 2012

Suresh Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 08-05-2012

Acts Referred:

Citation : (2012) 05 SHI CK 0010

Hon'ble Judges : V.K. Ahuja, J;Deepak Gupta, J

Bench : Division Bench

Advocate : R.L. Chaudhary and Mr. D.S. Kaith, for the Appellant; R.K. Bawa, Advocate General with Mr. Vivek Singh Thakur, Additional Advocate General and Mr. Rajesh Mandhotra, D.A.G. for respondents No. 1 to 3 and 5, for the Respondent

Judgement

1. Issue notice to respondent No. 4. The petitioners, in this case, are residents of Mandi Town. The petitioners have admittedly encroached upon the municipal land. According to them, this is nazul land and as per notification dated 21st October, 1971, the Municipal Council should first give an offer to settle the matter with the petitioners for selling or leasing the land to them. We are not going into this question at this stage because in CWP No. 2289 of 2007 we had held that the Municipal Council, Mandi was not doing its job and had abdicated its functions and had not taken any action against the encroachers. It was pursuant to the directions issued by this Court in CWP No. 2289 of 2007 that Mr. B.R. Kaundal has filed his report and we have issued directions in that petition that the Municipal Council, Mandi, should take further action in accordance with the report.

2. We cannot grant a stay order in this case because that would amount to nullifying the order passed in CWP No. 2289 of 2007. No person has a right to encroach upon public land and then claim that it should be given to him on market price or leased out to him. The land does not belong to the Government or to the Municipal Corporation, but they hold this land in trust for the entire

public. We do not understand why people who flout the law should be given any undue benefit in this regard.

3. However, serious allegations have been made in the petition that no action has been taken against other persons, who have also made encroachments on municipal land in Mandi Town. It is also stated that the Municipal Council has filed a false affidavit in CWP No. 2289 of 2007 that six persons have vacated their land. By the next date, the Municipal Corporation, as already directed in CWP No. 2289 of 2007, shall file affidavit in this case also with regard to these allegations made in para 15 of this petition. List on 29th May, 2012, alongwith CWP No. 2289 of 2007. It is made clear that when the Municipal Council takes action in accordance with the directions given by this Court, it shall act strictly in accordance with law and the objections raised by the petitioners shall be considered strictly in accordance with law.