

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

R.S.A. No. 24 of 2006.

Judgement reserved on:

Date of decision : February 28, 2006.

Mohd. Iqbal alias Iqbal Mohammad Appellant.

Versus

State of H.P. & anr. Respondents.

Coram

The Hon'ble Mr. Justice Surjit Singh, Judge.

Whether approved for reporting?

For the appellant: Mr. G.D.Verma, Sr. Advocate with
Mr. Romesh Verma, Advocate.

For the respondents:

Surjit Singh J. (Oral).

Heard and gone through the record. A notice under Section 163 of the H.P. Land Revenue Act, was issued to the appellant by the Assistant Collector, 1st Grade, requiring him to show cause why an order for his ejection from certain piece of land belonging to the government be not issued and why he should not be ejected from the said piece of land. The appellant appeared before the Assistant Collector and took the plea that he had been in

Whether reporters of local Papers may be allowed to see the judgment?

possession of the land for such length of period, which according to law of adverse possession, was enough for the ripening of possession into title. The Assistant Collector, 1st Grade required the appellant to file a plaint before him and proceeded to try the plea of adverse possession in accordance with the manner and the procedure prescribed for trial of a civil suit by the civil court. On conclusion of the trial, he returned the finding that the appellant had not acquired title by prescription and consequently dismissed his plea and passed the order for his ejection.

Appeal was filed by the appellant before the District Judge, as per Section 163, sub-section (5) of the Act. The District Judge has dismissed the appeal. Now, second appeal, under Section 163, sub-section(6) of the Act, has been filed in this Court. When quarried by this court as to what substantial question(s) of law are involved in the appeal, the learned counsel representing the appellant says that the procedure followed by the Assistant Collector 1st Grade is not warranted by the law, inasmuch as he could not have directed the appellant to file a plaint and secondly when the appellant had filed the plaint and in that sense it was a suit instituted by him, an order of ejection could not have been passed against him on the conclusion of the proceedings of said suit.

I have heard the learned counsel. Sub-section(3) of Section 163 of the H.P. Land Revenue Act, says that whenever, in any proceedings for ejection of an encroacher, a question is raised

that the encroacher is in adverse possession, such a question will be determined by the Assistant Collector, 1st Grade, as if he were a civil court and while determining such question as a civil court, he shall exercise all the powers which are exercisable by a civil court. In my considered view, the finding of the Assistant Collector, 1st Grade with respect to the plea of adverse possession raised by the appellant (encroacher) cannot be interfered with simply for the reason that when the encroacher appeared before the Assistant Collector and took the plea of adverse possession, he (the Assistant Collector) directed him to file a plaint. It could not have made a difference whether the plea of adverse possession was raised by the encroacher in the reply to the show cause notice or by filing a plaint, as per direction of the Assistant Collector, 1st Grade. This was, at the most, a case procedural error, which has caused no prejudice, whatsoever, to the appellant.

As regards the second point raised by the learned counsel, the fact that the proceedings commenced with the issuance of a notice under Section 163 of the H.P. Land Revenue Act, for the ejection of the appellant, as he was alleged to be an encroacher, cannot be lost sight of. Simply for the reason that the appellant was required to raise his plea of adverse possession in the form of a plaint - the proceedings initiated by the Assistant Collector cannot be said to have gone out of the purview of Section 163 of the H.P. Land Revenue Act.

For the foregoing reasons and also the fact that no other question of law is alleged to be involved, the appeal is dismissed.

CMPs No. 40 and 41 of 2006.

Infructuous in view of the orders passed in the main matter.

**February 28, 2006.
(Hem)**

**(Surjit Singh),
Judge.**