

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

Civil Writ Petition No. 1880 of 2007.

Decided on: 30.4.2008.

Roop Lal

... Petitioner.

Versus

State of H.P. and others.

... Respondents.

Coram:

Hon'bl Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting?

For the Petitioner : Ms. Vidushi Sharma, Advocate.

For Respondents 1 & 2 : Mr. Rajinder Dogra, Addl. Advocate General.

For Respondent No. 3 : Mr. Sanjeev Kuthiala, Advocate.

Rajiv Sharma, Judge.

The brief facts necessary for the adjudication of this petition are that respondent No.3 had submitted an application for the grant of Nautor land comprised in Khasra Nos.215/170/1 and 215/170/2, kita 2, measuring 0-4-0 bighas situate in Muhal Kandha/125, Tehsil Thunag, District Mandi (H.P.) before the Sub Divisional Officer (Civil) Chachiot at Gohar on 4.12.1985. The same was rejected by the Sub Divisional Officer (Civil) on 16.10.1986. Respondent No.3 preferred an appeal before the Deputy Commissioner, Mandi. The Deputy Commissioner, Mandi set aside the order of Sub Divisional Officer (Civil) while accepting the appeal preferred by respondent No.3 on 4.5.1987. The petitioner assailed the orders passed by the Deputy Commissioner before the Divisional Commissioner on 6.7.2005. The appeal was rejected by the Divisional Commissioner, Mandi Division on 29.7.2006 primarily on the ground that the appeal has been filed against the order of the Deputy Commissioner

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

after an elapse of about eighteen years. The petitioner filed a revision petition before the Financial Commissioner (Appeals) under Rule 30 of the Himachal Pradesh Nautor Rules, 1968 against the order of Divisional Commissioner, Mandi. The revision preferred by the petitioner was rejected by the Financial Commissioner (Appeals) on 10.7.2007.

Ms. Vidushi Sharma learned counsel for the petitioner has strenuously argued that the orders passed by the Deputy Commissioner, Divisional Commissioner and Financial Commissioner (Appeals) are not sustainable in the eyes of law. In other words, she has prayed for restoration of the order passed by the Sub Divisional Officer (Civil) dated 16.10.1986.

Learned Additional Advocate General and Mr. Sanjeev Kuthiala had supported the orders impugned by the petitioner.

I have heard the learned counsel for the parties and have perused the record carefully.

It is evident from the facts enumerated hereinabove that respondent No.3 had submitted an application for allotment of Nautor land as per the description given hereinabove on 4.12.1985. The same was rejected by the Sub Divisional Officer (Civil) on 16.10.1986. Respondent No.3 preferred an appeal before the Deputy Commissioner which was allowed by him on 4.5.1987. The Patta was executed in favour of respondent No.3 and mutation No. 64 was attested in his favour on 19.9.1989. It was only on 6.7.2005 that the petitioner had preferred an appeal under Rule 28 of the H.P. Nautor Rules, 1968 against the order dated 4.5.1987 of the Deputy Commissioner. The petitioner had not explained before the Divisional Commissioner why an appeal was preferred after a gap of eighteen years. The limitation provided under the Nautor Rules while preferring an appeal against the order of the Deputy Commissioner before the learned Divisional Commissioner is sixty days.

The petitioner had permitted the things to settle down and has filed the appeal after eighteen years.

Ms. Vidushi Sharma had argued that the petitioner did not know about passing of the order by the Deputy Commissioner dated 4.5.1987 and it was only in the year 2005 that he came to know about the order passed by the Deputy Commissioner and immediately an appeal was preferred before the Divisional Commissioner on 6.7.2005.

Mr. Sanjeev Kuthiala learned counsel for respondent No.3 has drawn the attention of the Court to Annexure R-1 whereby father of the petitioner was informed to receive the Patta on 15.5.1989 on behalf of respondent No.3. The petitioner is nephew of respondent No.3. It cannot be presumed that the petitioner did not know the order passed by the Deputy Commissioner since the Patta has been received by his father Shri Nand Lal as is evident from Annexure R-1. Shri Nand Lal had put his signatures on Annexure R-1. Shri Nand Lal was summoned since the respondent No.3 was in Army. The summon was received by Shri Nand Lal. The other codal formalities were also completed after the copy of the Patta was delivered to Shri Nand Lal, brother of respondent No.3.

Ms. Vidushi Sharma had also argued that the land in question could not be allotted in favour of respondent No.3 since it was a forest land. The learned Additional Advocate General has pointed out the report of the Kanungo dated 1.5.1986 whereby it is specifically mentioned that there is no path, water and trees on the land. The land was out of D.P.F. He had also drawn the attention of the Court to Annexure R-4, copy of the Jamabandi for the year 1984-85 of the Revenue Estate, Kandha, District Mandi whereby though in the column of owner, Government of Himachal Pradesh is mentioned but the possession of Estate Holders was recorded. Consequently, the land could not be termed as forest land in view of Annexure R-4. The other plea that the respondent No.3 could not be allotted land since he owns 10 bighas of land is also

liable to be rejected for the simple reason that respondent No.3 has only been allotted 0-4-0 bighas of land which is less than 20 bighas as stipulated under the H.P. Nautor Rules, 1968. It has also come in the reply filed by respondents No. 1 & 2 that as per the report of Field Kanungo, the respondent No.3 holds only 2-18-6 bighas of land. The petitioner has also not placed any material on record to substantiate that respondent No.3 has not put the land in use for which purpose it was allotted in the year 1987.

Consequently, in view of the observations made above, there is no merit in this petition. The same is rejected. No order as to costs.

(Rajiv Sharma)
Judge.

30th April, 2008.
(cr)