

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No. 539 of 2001

Judgment reserved on: 10.9.2009

Date of decision: 30 .9.2009

Bhagat Ram Dass

.... Appellant

Versus

State of H.P.

..... Respondent

Coram:

The Hon'ble Mr. Justice Deepak Gupta, J.

Whether approved for reporting ? Yes

For the appellant: S/Shri Padam Dev Sharma, and
D.R.Verma, Advocates.

For the respondent: S/Sh.Rajesh Mandhotra and Vikas
Rathore, Dy.Advocate Generals.

Deepak Gupta, J.

This Regular Second Appeal was admitted on
the following question of Law:-

1. Whether the courts below have misread and misinterpreted the evidence on record as well as law applicable thereto to hold that the premises in dispute are the public premises and the order dated 8.3.1990 passed by the District Collector is within his jurisdiction?

This Regular Second Appeal is directed against
the judgment of the learned District Judge, Bilaspur
passed in Civil Appeal No.4 of 1994 decided on 30.8.2001
whereby he has affirmed the judgment passed by the

learned Senior Sub Judge, Bilaspur in Civil Suit No.219/1 of 1992/90 dated 21.10.1993.

Briefly stated the facts of the case are that the plaintiff filed a suit in the Trial Court claiming that he is the worshipper/Mahant of temple/Deity Ram Chander Ji at Swarghat and the order dated 8.3.1990 passed by the District Collector, Bilaspur is without jurisdiction and is not binding upon the plaintiff and a decree for permanent injunction restraining the defendant-State of H.P from interfering in the worship, management and control of the plaintiff was sought.

The brief facts giving rise to the petition are that the public of the area in question filed some complaint to the District Collector, Bilaspur in respect of a 'Sarai' at Swarghat. On the basis of this complaint, the Collector initiated proceedings under the H.P Public Premises and Land (Eviction and Rent Recovery) Act, 1971 against the plaintiff. It was alleged that the plaintiff is in illegal possession of the Sarai which in the revenue papers is recorded as "Sarai Aam and Rafai Aam. It was alleged that the plaintiff had rented out some rooms of the Sarai to a number of persons and was charging rent from them. In response to the notice issued under the H.P Public

Premises and Land (Eviction and Rent Recovery) Act, 1971, the plaintiff stated that there is a temple of Shree Ram Chandarji at Swarghat and the Sarai belongs to the temple. According to him, the Sarai was never constructed by the State Government but was constructed by the Rulers of the erstwhile State of Bilaspur. It was further alleged that the grandmother of the erstwhile Ruler of Bilaspur State Raja Anand Chand had constructed the Sarai. According to the plaintiff, Mahant Ram Saran Dass was appointed Manager Incharge of the temple and the Sarai. He was succeeded by the plaintiff Bhagat Ram Dass who was the Manager of the properties. The plea of the plaintiff before the Collector was that he is not in possession of the Sarai or the temple but is only worshipper thereof and that the temple Ram Chanderji be declared owner with right of worship to the plaintiff. The Collector on this, passed the following order:-

“I agree with the version of the counsel as well as Shri Bhagat Ram Dass to change the entries in the record as part of Temple, with the following conditions:

- 1.The Naib Tehsildar, Swarghat will be the overall Incharge of the Temple.
- 2.The right of worship will continue with Mahant Bhagat Ram Dass.

3. The Naib Tehsildar will appoint a five members Committee and get the approval of the undersigned and the Committee will maintain the Sarai as well as Temple with income and expenditure account which will be checked by the Naib Tehsildar fortnightly.

The entries of Sarai Aam and Rafai Aam be changed to Sarai God Ram Chandra Ji Temple, Swarghat. A copy of this order be sent to Naib Tehsildar, Swarghat for making necessary entries in the record and further compliance."

Thereafter, the plaintiff filed a suit challenging the order of the Collector as well as claiming the other reliefs as stated here-in-above. The suit was contested by the State which raised various pleas and the following issues were framed:-

1. Whether the plaintiff is entitled for the declaration as alleged?
2. Whether the order dated 8.3.1990 of District Collector is wrong, without jurisdiction and it is not binding on the rights of the plaintiff?
3. Whether the plaintiff is entitled for the injunction as prayed for?
4. Whether the plaintiff has no locus standi to file the present suit?
5. Whether the suit is not maintainable?
6. Whether the plaintiff is estopped by his act and conduct to file the suit?
7. Whether no cause of action has arisen to the plaintiff?
8. Whether the suit is bad for non-joinder of necessary parties?
9. Relief.

The learned Trial Court held that the order in question had been passed by the Collector in the

presence of the plaintiff and his counsel. It held that the order was a valid order and could not be challenged in a Civil Court. On this point alone, the entire suit of the plaintiff was rejected. The learned Lower Appellate Court dismissed the appeal filed by the plaintiff. Hence the present appeal.

I am constrained to observe that both the Courts below did not appreciate as to whether the Collector had exercised powers vested in him under the H.P Public Premises and Land (Eviction and Rent Recovery) Act, 1971 or not. Under this Act, if any person is in unauthorized occupation of public premises, after given notice to him, an order of eviction can be passed against him. He can also be required to pay rent/damages for the period he is being in occupation. The Collector has no jurisdiction to pass any other order.

From the record of the case, it is apparent that only a complaint from the public was received. There is no finding whether the premises are public premises or not. The directions given by the Collector were not within his jurisdiction neither under the H.P Public Premises and Land (Eviction and Rent Recovery) Act, 1971 or under any other provision of law. The Collector could not have

ordered that the ownership of the land be recorded in favour of the temple instead of the State. He could not have directed that the Naib Tehsildar will be Incharge of the Temple or that a Committee be appointed for this purpose. This order is totally and wholly without jurisdiction. It is in fact not an order passed under any provision of the H.P Public Premises and Land (Eviction and Rent Recovery) Act, 1971. The learned Deputy Advocate General appearing for the State has not been able to point out any provision of law under which such an order could be passed.

In my considered opinion, the Collector totally exceeded his jurisdiction and exercised jurisdiction not vested in him by law. The H.P Public Premises and Land (Eviction and Rent Recovery) Act, 1971 does not envisage the passing of any of the directions or conditions which have been passed by the Collector. Both the Courts below failed to appreciate that though the order was purported to have been passed under the H.P Public Premises and Land (Eviction and Rent Recovery) Act, 1971 in fact it was an order transferring the ownership of the temple and Sarai from the State to the temple and further vesting the management of the temple with the Tehsildar

and his Committee. Such an order could not have been passed under the Public Premises Act and being an order without jurisdiction could have been challenged in the Civil Court.

In case the Collector or the State felt that the temple was not being managed properly, it could refer the matter to the learned Advocate General and file a suit under Section 92, CPC for framing a scheme for proper administration of a public trust or it could take over the management of the temple in terms of the H.P Hindu Public Religious Institutions and Charitable Endowments Act, 1984. However, the Collector could not have passed the order which is wholly without jurisdiction. Consequently, it is held that both the Courts below have totally mis-interpreted and mis-understood the order of the Collector and the said order is wholly without jurisdiction. Therefore, the appeal filed by the appellant is allowed and the matter is remanded to the learned Trial Court to decide the other issues arising out of the suit in light of the observations made here-in-above. It is clarified that this Court has only decided issue No.2 framed by the Trial Court and now the Trial Court shall decide issues No.1 and 3 on the basis of evidence already

led before it. It is also clarified that in case the State wants, it can take appropriate steps under Section 92 of the CPC or under the H.P Hindu Public Religious Institutions and Charitable Endowments Act, 1984.

The parties through their counsel are directed to appear before the Senior Sub Judge, Bilaspur on 16th November, 2009. The learned Senior Sub Judge shall decide the other issues on the basis of evidence already on record as early as possible and in any event not later than 28th February, 2010.

The appeal is disposed of in the aforesaid terms with no order as to costs.

September 30, 2009
(m)

(Deepak Gupta)
Judge