

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

RSA No. 385 of 2003
& RSA No. 104 of 2004
Date of decision: 31.07.2015

1. RSA No. 385 of 2003:

Shri. Sohan Lal & others.

.....Appellants.

Versus

Shri Sohan Lal & another:

.....Respondents.

2. RSA No. 104 of 2004:

Collector, Mandi District, Mandi, H.P.

.....Appellant.

Versus

Shri Sohan Lal & others.

.....Respondents.

Coram

The Hon'ble Mr. Justice Dharam Chand Chaudhary, Judge.

¹ Whether approved for reporting? No.

1. RSA No. 385 of 2003:

For the appellants:

Mr. Lakshay Thakur, Advocate.

For the respondents:

**Mr. G.R. Palsra, Advocate, with Ms.
Leena Guleria, Advocate, for
respondent No. 1.**

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

Mr. D.S. Nainta & Mr. Virender Verma, Addl. AGs with Mr. Pushpinder Jaswal, Dy. AG, for respondent No. 2.

1. RSA No. 104 of 2004:

For the appellant:

Mr. D.S. Nainta & Mr. Virender Verma, Addl. AGs with Mr. Pushpinder Jaswal, Dy. AG.

For the respondents:

Mr. G.R. Palsra, Advocate, with Ms. Leena Guleria, Advocate, for respondent No. 1.

Mr. Lakshay Thakur, Advocate, for respondents No. 2 to 13.

Dharam Chand Chaudhary, Judge. (Oral).

This judgment shall dispose of the present appeal and connected appeal, RSA No. 104 of 2004, involving similar questions of law & facts and having arisen out of the same judgment and decree.

2. This appeal has been preferred by the appellants (hereinafter referred to as defendants No. 1 to 12), whereas the connected one by defendant No. 13, the District Collector. The judgment under challenge in

both the appeals has been passed by learned Additional District Judge, Mandi, in Civil Appeal No. 32 of 1998, whereby the learned Lower Appellate Court has arrived at a conclusion that the grant of suit land as 'nautor' to respondent No. 1 herein (plaintiff in the Trial Court) could have not been cancelled by the Deputy Commissioner, defendant No. 13, as the competent authority under the Scheme, namely The Himachal Pradesh Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme 1975 (hereinafter referred to as 'the Scheme') is the Commissioner and has, therefore, quashed the judgment and decree passed by learned Trial Court and dismissed the suit.

3. The bone of contention in the present lis is a parcel of land entered into khata/khatauni No. 69 min/140 min, khasra No. 8/1 and 8/2, measuring 3-8-0 bighas, situated in Muhal Balhri/42, Maqua Movi Seri, Tehsil Chachiot, District Mandi, H.P. The suit land admittedly was allotted as nautor to respondent No. 1-plaintiff in the year 1982, however; later on defendants No. 1 to 12 have objected to the grant of the suit land as nautor in favour of respondent No. 1-plaintiff on the ground that he has obtained the grant on

concealment of facts, as he was not landless at the relevant time. It is during the pendency of the suit, defendant No. 13 has cancelled the grant of the suit land as nautor in favour of respondent No. 1-plaintiff vide order dated 01.02.1993, passed in File No. 13 of 1993. The respondent-plaintiff filed review petition registered as File No. 21 of 93. That was also dismissed on 12.12.1994.

4. The complaint is that defendant No. 13 has cancelled the grant of the suit land made in favour of the respondent-plaintiff without any jurisdiction and as defendants No. 1 to 12 started causing interference in the suit land, hence the suit for the relief of permanent prohibitory injunction restraining them from interfering in his peaceful possession over the suit land, was filed.

5. The defendants have contested the suit on the ground of maintainability. On merits also it was claimed that since the suit land was illegally sanctioned as nautor in favour of the plaintiff, therefore, defendant No. 3 has rightly cancelled the same.

6. It was further claimed that it is the defendants who are

owners-in-possession of the suit land.

7. In view of the pleadings of the parties learned Trial Court has framed the following issues:

- 1. Whether the plaintiff is entitled to the relief of injunction, as prayed for? OPP**
- 2. Whether the suit is not maintainable, as alleged? OPD**
- 2A. Whether the order of cancellation of Nautor dated 01.02.1993 is within jurisdiction and order is null and void and illegal and liable to be set aside? OPP**
- 2B. Whether this Court has got no jurisdiction to try this present suit? OPD**
- 2C. Whether the plaintiff is estopped by his own act and conduct to file the present suit? OPD**
- 2D. Whether the legal and valid notice under Section 80 C.P.C. has been issued, if so its effect? OPD**
- 2E. Whether the suit is properly valued for the purpose of court fees and jurisdiction? OPD**
- 2F. Whether the suit is not maintainable in the present form? OPD**

8. The parties were put to trial on all the issues and the plaintiff in turn has examined eight witnesses, including his Attorney, PW-1 Shri Durni Ram. He has also placed reliance on the Jamabandi of the suit land for year 1986-87 Ex. PW-1/A, Tatima Ex. PW-1/B, copy of Patta Ex. PW-1/C, copy of mutation No. 115 Ex. PW-1/D, copy of Jamabandi for the year 1991-92 Ex.

PW-1/E, copy of Khasra Girdawari for the year 1986-87 Ex. PW-1/G and copy of Khatauni Ex. PW-1/H

9. On the other hand, defendant No. 3, Shri Krishan Kumar, has stepped into the witness-box as DW-1 and also examined Shri Girdhari Lal, DW-2 and Shri Puran Chand, Patwari, Patwar Circle Movi Seri, Tehsil Chachiot, District Mandi, as DW-3. Reliance on their behalf has also been placed on the copy of mutation No. 125 Ex. DW-3/A, copy of Misal Haqiyat for the year 1995-96 Ex. DW-3/B and copy of Khasra Girdawari for the year 1995-96 Ex. DW-3/C.

10. Learned Trial Court on appreciation of the evidence and also the given facts and circumstances of the case, arrived at a conclusion that the suit land has been granted as nautor to respondent No. 1-plaintiff after following the procedure and that the cancellation of the grant is null, void and illegal. While holding that the suit is maintainable, the same has been decreed. Learned Lower Appellate Court while concurring with the findings that the Civil Court has jurisdiction to try and entertain the suit and holding that the Deputy Commissioner was not the competent

authority to have cancelled the grant of the suit land made in favour of respondent No. 1-plaintiff as nautor and rather as per Clause 9A of the Scheme, it is the Commissioner who alone was competent to have cancel the same, has affirmed the judgment and decree passed by the learned Trial Court and dismissed the appeal.

11. Appellants-defendants No. 1 to 12 have assailed the legality and validity of the judgment and decree under challenge on the ground inter alia that learned Lower Appellate Court has not touched the merits of the case and rather dismissed the appeal merely on the ground of jurisdiction of the Civil Court to try and entertain the suit. Also that learned Lower Appellate Court has failed to appreciate that as per Clause 9-A of the Scheme it is the Deputy Commissioner competent to cancel the grant. The findings that the Civil Court has jurisdiction to try and entertain the suit are also stated to be wrong for the reason that the Scheme itself is a complete Code and as such the order qua cancellation of the grant passed by the Deputy Commissioner was final and could have not been questioned before the Civil Court. The testimony of Mukhtiar of the

plaintiff could have not been relied upon as the plaintiff himself has failed to step into the witness-box. Therefore, an adverse inference should have been drawn against him. In view of the findings that the grant was obtained by the respondent-plaintiff in connivance with revenue staff and on suppression of facts the suit could have not been decreed.

12. On the other hand, defendant No. 13, Collector Mandi District, has also questioned the legality and validity of the impugned judgment and decree on more or less similar grounds and emphasizing mainly that the Deputy Commissioner has rightly cancelled the grant after affording opportunity of being heard to respondent-plaintiff. Since as per the conclusion drawn by learned Lower Appellate Court, it is the Commissioner who alone could have passed the order qua cancellation of the grant, the only course available was to have set-aside the order passed by the Deputy Commissioner and to remand the case to the authority concerned for passing order afresh. It has also been urged that the evidence available on record has not been appreciated in its right perspective.

13. This appeal has been admitted on the following substantial question of law:

Whether the learned Lower Appellate Court has acted in a perfunctory and perverse manner by ignoring the correct provisions of Rule 9(A) of the H.P. Grant of Nautor Land to Landless & other Eligible Persons Scheme, 1975, and thereby has illegally held that the Deputy Commissioner has no jurisdiction to set aside the grant?

14. The connected appeal has also been admitted on the similar question of law, which reads as follows:

Whether the learned Lower Appellate Court has acted in a perfunctory and perverse manner by ignoring the correct provisions of Rule 9(A) of the H.P. Grant of Nautor Land to Landless and other Eligible Persons Scheme, 1975 and thereby has illegally held that the Deputy Commissioner has no jurisdiction to set aside the grant?

15. It is seen that the question of law formulated in both these appeals are identical in nature. As a matter of fact, both appeals have been admitted on the legal question that when the Deputy Commissioner is the competent authority to cancel the grant of nautor

land under Clause 9 of the Scheme, the findings to the contrary recorded by learned Lower Appellate Court are illegal. The impugned judgment and decree has therefore been sought to be quashed and set aside on this ground alone. The appeals have not been sought to be admitted nor admitted on the question of the veracity and reliability of the evidence available on record.

16. True it is that The Himachal Pradesh Grant of Nautor Land to Landless Persons and Other Eligible Persons Scheme, 1975, when initially notified, as per Clause 9-A thereof it is the Commissioner who was competent to cancel the grant of land as nautor; if made wrongly and in favour of a person not entitled/eligible therefor; of course, after affording due opportunity of being heard to the allottee. There is, however, amendment in the Scheme notified vide Notification No. Rev.2.A.(3)-11/77 dated Shimla-2 the 2nd February, 1978, and as per the same words “Deputy Commissioner” have been substituted for word ‘Commissioner’ and as such now it is the Deputy Commissioner competent to cancel the grant. Therefore, the findings that it is the Commissioner who alone could

have cancelled the grant of the land as nautor to the plaintiff recorded by the leaned Lower Appellate Court are not legally sustainable. The amendment in the Scheme, as aforesaid, either seems to have not been brought to the notice of learned Lower Appellate Court or escaped its notice. The inescapable conclusion, therefore, would be that the order of cancellation has been made by competent authority that is the Deputy Commissioner and the findings that such order could have only been passed by the Commissioner as recorded by learned Lower Appellate Court are not legally sustainable.

17. However, reversal of the findings so recorded by the learned Lower Appellate Court not results in the dismissal of the suit, because the respondent-plaintiff by way of amendment in the plaint has challenged the order dated 01.02.1993, mark 'Z' on merits, whereby defendant No. 13 (appellant in connected appeal) has cancelled the grant of suit land. Although the appeals have not been admitted on the question of the reliability and dependability of the evidence produced by the parties on both sides on merits nor on that the evidence so produced has been mis-

appreciated, mis-construed or misread and has resulted into miscarriage of justice to the appellants therein, however, in order to decide the fate of these appeals suffice would it to say that the allotment of the suit land as nautor has been cancelled by the Deputy Commissioner illegally and in the utter disregard of the given facts and circumstances. The land as per the evidence in the form of jamabandis as well as khasra girdawari produced by the plaintiff in evidence is now cultivable whereas at the time of the grant thereof as nautor to the respondent-plaintiff, the same was 'Charand'. The factum of ancestral land owned and possessed by the father of the respondent-plaintiff seems to have weighed with the Deputy Commissioner while cancelling the grant. However, particulars such as khasra Nos. etc. of the said land are missing in the order Mark 'Z'. Above all, the evidence as has come on record by way of copy of Pariwar Register Ex. PW-3/A reveals that the respondent-plaintiff at that time was residing separately from his father. Otherwise also the then Tehsildar who has processed the application made by the respondent-plaintiff for grant of the suit land as nautor has stepped into the witness-box as PW-4 and has

stated that on the basis of the recommendation made by the Nialb Tehsildar and also the record as well as the inquiry conducted, the plaintiff was found to be landless and as such the land was granted to him as nautor. The revenue record produced in evidence is also suggestive of that after the grant of Patta Ex. PW-1/C, Mutation No. 115 Ex. PW-1/D was attested in the name of the respondent-plaintiff. The entries in the jamabandis Ex. PW-1/A for the year 1986-87 and Ex. PW-1/E for the year 1991-92, reveals that he came to be recorded owner-in-possession thereof. There is no iota of evidence as to show that defendants are in possession of the suit land or one of them raised the construction of a house thereon. Had it been so, entries to this effect would have reflected in the revenue record. Therefore, the evidence has come on record by way of oral testimony of defendant Shri Krishan Kumar while in the witness-box as DW-1 and DW-2 Shri Girdhari Lal is neither sufficient nor dependable to arrive at a conclusion that the suit land is in the possession of the defendants. The evidence as has come on record by way of the testimony of the Patwari, DW-3 Shri Puran Chand, is hardly of any help to

the defendants' case for the reason that he has proved such record viz, the mutation and the entries in the jamabandi as well as khasra girdawari which were prepared before the cancellation of the grant by the Deputy Commissioner.

18. The re-appraisal of the given facts and circumstances of the case and also the evidence available on record, in the manner aforesaid, therefore, lead to the only conclusion that learned Lower Appellate Court has not committed any illegality or irregularity while dismissing the appeal and while affirming the judgment and decree passed by learned Trial Court. The findings that the Deputy Commissioner was not competent to cancel the grant, as recorded by learned Lower Appellate Court, no doubt are contrary to the factual position, as discussed hereinabove, however, hardly of any help to the case of the defendants for the reason that they have failed to prove that the plaintiff has obtained the grant fraudulently and by way of mis-representation of facts. On the other hand, the respondent-plaintiff has satisfactorily pleaded and proved that the suit land has rightly been granted as nautor to him and he has made the same

cultivable and is in possession thereof. I, therefore, find no illegality and infirmity with the judgment and decree under challenge and the same as such is hereby ordered to be affirmed.

19. In view of what has been said above, these appeals fail and the same are accordingly dismissed. The judgment and decree passed by learned Lower Appellate Court is affirmed. The parties, however, to bear their own costs. Both the appeals stand disposed of, so also the pending application(s), if any.

20. An authenticated copy of this judgment be placed on the record of RSA No. 104 of 2004.

**(Dharam Chand Chaudhary)
Judge**

**31st July, 2015
(viender)**