

**IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA**

**ON THE 31<sup>st</sup> DAY OF AUGUST, 2022**

**BEFORE**

**HON'BLE MR. JUSTICE VIVEK SINGH THAKUR**

**CIVIL MISC. PETITION MAIN (ORIGINAL) No. 285 of 2021**

**Between:-**

1. DURGA SINGH, AGED 61 YEARS, S/O LATE SH. GANGA RAM, R/O SHALI BAZAAR THEOG, P.O. & TEHSIL THEOG, DISTRICT SHIMLA, H.P.
2. UDAY SINGH, AGED 63 YEARS, S/O LATE SH. GANGA RAM, R/O SHALI BAZAAR THEOG, P.O. & TEHSIL THEOG, DISTRICT SHIMLA, H.P.

**...PETITIONERS**

**(BY SH. RAJINDER SINGH CHANDEL, ADVOCATE.)**

**AND**

1. ABHISHEK VASHISHTH S/O LATE SH. PAWAN KUMAR, R/O SHALI BAZAAR THEOG, P.O AND TEHSIL THEOG, DISTRICT SHIMLA, H.P.
2. ABHILOV VASHISHTH S/O LATE SH. PAWAN KUMAR, R/O SHALI BAZAAR THEOG, P.O & TEHSIL THEOG, DISTRICT SHIMLA, H.P.

**...RESPONDENTS**

**(BY SH. ROMESH VERMA, ADVOCATE.)**

***Whether approved for reporting?***

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*This petition coming on for pronouncement this day, the Court passed the following:*

**ORDER**

Petitioner has approached this Court for setting-aside order dated 21.10.2021 passed by Executing Court/Rent Controller, Theog, District Shimla, H.P., whereby objections preferred by petitioner under Section 47 of the Code of Civil Procedure, in Execution Petition No. 5-10 of 2015, titled Abhishek & others Vs. Durga Singh, have been dismissed with direction to the petitioner to handover vacant possession of Shop

No. 34/9, situated in Ward No. 5, Shali Bazaar, Theog, District Shimla, H.P.

2. Plea of petitioner/tenant is that predecessor-in-interest of respondents was not owner of the premises in question, rather State of H.P. was and is owner and predecessor-in-interest of respondents as well as respondents have been wrongly shown in possession of the premises in question in revenue record and an application for correction of revenue entries has been filed by the petitioner and, therefore, neither predecessor-in-interest of the respondents nor respondents are landlords of the petitioner/tenant and petitioner is in occupation of Shop No. 24/1, but not Shop No. 34/9, and he is not occupying the disputed shop and that petitioner has also filed a Civil Suit against respondents regarding his ownership alongwith an application under Order 39 Rule 1 and 2 CPC, that respondents/landlords had not filed copy of map sanctioned by Municipal Council, Theog and no such copy was ever supplied to petitioner/tenant, and that a written complaint has been filed by the petitioner to the Town and Country Planning Department, Shimla, complaining that respondents are not owners of property and further that High Court had not directed to order ejectment of the petitioner, rather had directed respondents to file sanctioned map, which was not on record.

3. Eviction Petition was filed by respondents in the year 2001, wherein petitioners herein were respondents. In paras 1 and 2 of Eviction Petition, description of premises was given as MC No. 34/9 Shali Bazaar, Ward No. 5, Theog. In paras 3(a) and 3(b) of Eviction

Petition, respondents had claimed themselves as landlord and petitioners Durga Singh and Uday Singh were named as tenants.

4. In reply to the petition, though in preliminary objections with respect to ownership and regarding certain documents were raised, however, on merits, contents of paras 1 and 2 of the Eviction Petition were stated to be matter of record and in response to para 3 of the Eviction Petition, it was stated that these were formal and needed no reply, whereas contents 8 of the petition was admitted to be correct.

5. Perusal of eviction petition indicates that complete address of landlords as well as tenants have been given in the memo of parties of the Eviction Petition and in paras 3(a) and 3(b), respondents herein and the petitioners have been mentioned as landlords and tenants respectively by referring names and addresses given in the memo of parties. Therefore, any objection with respect to relationship of landlord and tenant between the predecessor-in-interest of respondents or respondents and petitioners, was never raised in the Eviction Petition, rather such relation was admitted explicitly. Address and location of premises was also admitted. In para 8 of Eviction Petition, premises in question has been stated to be one shop. In reply contents of para 8 of the petition were not disputed.

6. In aforesaid facts, objections with respect to relationship of landlord and tenant, identification of premises in reference and right of respondents-landlord to file Execution Petition for getting vacant possession of the premises in reference cannot be raised now in Execution Petition by filing an application under Section 47 C.P.C.

7. Filing of an application or complaint before Town and Country Planning, Shimla, filing of suit against respondents alongwith application under Order 39 Rule 1 and 2 CPC, wherein no restrain order has been passed against execution of eviction order passed against the petitioner, petitioner has no right to claim stay of execution proceedings or order of eviction, which has been upheld up till High Court.

8. It is also noticeable that Eviction Petition was allowed and that eviction order was assailed by the petitioner before Appellate Court as well as in the High Court and order of eviction was maintained uptill the High Court. Another fact, apt to record here, is that on 31.3.2011, Revision Petition filed by petitioner in the High court was disposed of with consent of the parties, subject to the term that order of eviction shall be available for execution, only on sanction of plan of construction by the competent authority. At that stage also petitioners had conceded to the claim of respondents being landlords and their status as their tenant and also with respect to premises bearing No. 34/9 mentioned in the Eviction Petition as well as in the Execution Petition. Now, as also recorded in the impugned order by Executing Court, respondents have placed on record sanctioned map/plan approved from Municipal Council, Theog and approval latter dated 16.2.2019 in favour of respondents/landlords, therefore, now nothing remains to be adjudicated with respect to claim raised by the petitioner in objections preferred under Section 47 CPC and eviction order is to be executed in terms of order dated 31.3.2011, period by the High Court wherein petitioner had consented to vacate the premises on approval and sanction of plan/map by the concerned authority.

9. It has been claimed by the petitioner that Shop No. 34/9 was already been occupied by grandfather as well as father of respondents since long and petitioner is in possession of another store/shop situated on second floor, which was taken on rent by the petitioner from grandfather of respondent, but due to litigation, petitioner had left possession of said shop/store and the same is in possession of respondents. It has been claimed that petitioner is in possession of Shop No. 24/1 in the top floor of the building abutted to Shali Bazaar, Theog and petitioner is also in possession of another shop/store in the same building in second floor.

10. It has been contended by learned counsel for the petitioner that eviction order has been passed with respect to Shop No. 38/6, which is not in possession of the petitioner.

11. Learned counsel for the respondents has submitted that it was a ministerial typographical mistake, because of which number of premises in reference has been mentioned has 38/6 instead of 34/9, whereas respondents are claiming for warrant of possession with respect to Shop No. 34/9.

12. In the Rent Petition, it was clearly mentioned that premises 34/9 in possession of petitioners was comprised of one shop, and this fact was admitted by the petitioner. Now petitioner is claiming that shop on top floor is 24/1. On one hand in para 2, petitioner is claiming that alongwith shop of top floor, he is in possession of another shop/store in the same building in second floor. However, in later part of this para, he has stated that due to litigation, possession of the said shop/store was left by the petitioner and the same is in possession of respondents. At

one hand petitioner is denying relationship of landlord and tenant disputing ownership of Amar Nath and his successors-in-interest and on the other hand he is claiming that shops were taken on rent by him from grand-father of respondents and possession of shop was left by him to Amar Nath. Petitioner is breathing hot and cold in the same breath. Petitioner is contradicting his own stand, which was taken not only in the reply to the Eviction Petition, but also in present petition. It appears that present petition has been filed to create confusion, despite the fact that everything was set at rest and petitioner had agreed for passing a consent order by the High Court whereby petitioner was directed to handover the premises in question to the landlords on sanction and approval of map/plan by the competent authority. Alongwith rejoinder, a copy of Writ Petition CWP No. 7496 of 2021 has also been placed on record, wherein petitioner herein is also one of four petitioners, wherein they have laid challenge to map dated 22.12.2018 with further prayer to quash and set aside the warrant of possession issued by the Executing Court against those petitioners. It is also noticeable that petitioners in that Civil Writ Petition, including present petitioner, are occupying shops and are suffering eviction order like petitioners and they have also preferred petition under Article 227 of the Constitution of India against the directions of Executing Court to handover the possession bearing CMPMO Nos. 281 of 2021, titled as Paras Ram Vs. Abhishek Vashishth & another; 282 of 2021, titled as Shami Sood Vs. Abhishek Vashishth & another; 284 of 2021, titled as Hira Singh Vs. Abhishek Vashishth & another; and 285 of 2021 titled as Durga Singh & another Vs. Abhishek Vashishth & another.

13. Taking into consideration entire facts and circumstances and material placed before me, petition is dismissed with observation that in case petitioner fails to handover vacant possession of premises then appropriate warrant of possession shall be issued with respect to premise MC No. 34/9 for executing the order of eviction against the petitioner. Taking into consideration conduct of the petitioner, he may be burdened with cost but taking lenient view, as he may be acting on advice of counsel, no cost is being imposed. Interim stay granted vide order dated 18.11.2021 shall stand vacated.

The petition stands disposed of in aforesaid terms, alongwith pending application(s).

Parties are permitted to produce/use copy of this order downloaded from the Website of the High Court of Himachal Pradesh before the authorities concerned/Trial Court and the said authorities/Trial Court shall not insist for certified copy, however, passing of the order may be verified from the Website of the High Court or otherwise.

**31<sup>st</sup> August, 2022**  
(Keshav)

**(Vivek Singh Thakur),**  
**Judge.**