



(2024:HHC:6465-DB)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.1128 of 2017

Date of Decision : 01.08.2024

Rishi Raj

..... Petitioner

Versus

State of Himachal Pradesh and others

..... Respondents

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge

The Hon'ble Mr. Justice Bipin Chander Negi, Judge

Whether approved for reporting?¹

For the Petitioner : Mr. Neel Kamal Sharma, Advocate.

For the Respondents : Mr. Anup Rattan, Advocate General with
Mr. Pawan K. Nadda, Additional Advocate
General.

Vivek Singh Thakur, Judge (oral)

Petitioner, in present case, has assailed order dated 22.03.2017, passed by the Divisional Commissioner, in case No.14 of 2017, titled as *Rishi Raj and another vs. State of Himachal Pradesh*, whereby his eviction from the forest land, comprising in Khasra Nos.665, 676, 1018, 1311, 1312, 1313, 1345, 1356, 1620, 1630, 1635, and 1637 Kita 12 area measuring 1-02-96 hectare in Baragarh-III forest, Tehsil Manali, District Kullu, H.P., as directed vide order dated 28.11.2016, passed by Collector Forest Division, Kullu, H.P. under H.P.

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

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Public Premises Land (Eviction and Rent Recovery) Act, 1971, in case No.10(Pk)/2012-13, has been affirmed.

2. Land in reference has been identified and demarcated by the respondents as Forest Land, pertaining to Khasra Nos.665, 676, 1018, 1311, 1312, 1313, 1345, 1356, 1620, 1630, 1635, and 1637 Kita 12 area measuring 1-02-96 hectare in Baragarh-III forest, Tehsil Manali, District Kullu, H.P. Though a ground has been taken in the petition that land in reference is not a forest land, but nothing has been placed on record to substantiate the said claim.

3. After service of notice under Section 4 of of the H.P. Public Premises & Land (Eviction & Rent Recovery) Act 1971. Petitioner attended the Court and filed reply to the show cause notice, contending therein that the suit land is in his possession since the time of forefathers, for the last 40-45 years. However, the petitioner has not bothered to place on record any material to substantiate his claim of adverse possession.

4. Further, it is also apt to record here that there is no provision for adjudicating the claim or question of title under the Public Premises Act and, therefore, in case any party claims right on the basis of adverse possession, then the said party has to take appropriate steps by initiating appropriate proceedings in competent Court having jurisdiction, but the petitioner has not done so. He has only taken a plea of adverse possession in reply to the notice and in grounds for

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assailing the impugned eviction order passed by the Collector. Therefore, we do not find any force in the plea raised by the petitioner.

5. Learned counsel for the petitioner has also submitted that in present case no proper demarcation to identify the land of Forest Department has been conducted. No other plea has been raised.

6. In view of order to be passed herein after, grievance of the petitioner with respect to demarcation would be redressed as the concerned Authority, for proper identification of the land in reference, shall have to demarcate the land in accordance with law.

7. As observed by this Court in its order dated 17.7.2024, passed in *CWP No. 1028 of 2002* and connected petitions including present petition, adjudication of *CWP No. 1028 of 2002* regarding validity of Section 163(A) of the Himachal Pradesh Land Revenue Act, 1953 and Himachal Pradesh Regulation and Encroachment (in certain cases) of Government Land and Disposal of Government Land Rules, 2002, shall have no impact in the present matter, because in the absence of approval of the Central Government or for want of pendency of any request for such approval of the Central Government, the forest land cannot be put to a use, which is a non-forest purpose, as also has been defined and explained in Section 2 of Forest Conservation Act, 1980, clarifying that breaking up or clearing of any forest land or portion thereof for the cultivation of tea, coffee, spices, rubber, palms, oil bearing plants, horticulture crops or medical plants

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and even any purpose other than reforestation, shall amount to using such land for non-forest purpose.

8. After going through the record, impugned order and averments made in the petition and also considering the submissions made by learned counsel for the petitioner, we do not find any merit in the petition and accordingly the same is dismissed.

9. Consequentially, concerned Revenue Officers, including Tehsildar concerned and Forest Authorities, including DFO concerned, are directed to identify the Government/forest land encroached by the petitioner properly and take possession of the encroached Government/forest land by fixing permanent boundary marks of the Government land on or before **31st August, 2024** and compliance affidavit with respect to taking of possession on the spot, be filed by the concerned Divisional Forest Officer on or before **16th September, 2024**.

10. The concerned authorities are also directed to remove other encroachment(s) from the Government/Forest land detected/found on the spot during demarcation/identification of the land in reference by taking appropriate action in accordance with law in time bound manner, to the maximum within six months from the date on which such encroachment is found/detected.

11. Improvements/structures, if any, made on the encroached land shall vest in the State of Himachal Pradesh/Department and shall

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be utilized by the State/Department for its use. In case petitioner/encroacher intends to take away the fixtures/building material/debris for his own use, he may opt for that in writing, but in that eventuality he shall take away the material of the structure before 30th October, 2024 at his own cost.

12. Any dereliction in performing compliance of aforesaid direction or laxity to remove encroachment from Government/Forest land shall be taken seriously and consequential adverse action/proceedings shall ensue.

13. Entire aforesaid proceedings shall be video graphed and copy of videography be placed on record with affidavit.

14. Learned Advocate General is directed to bring this order in the notice of the Chief Secretary to the Government of Himachal Pradesh, for ensuring timely compliance.

15. The petition is disposed of, so also pending application(s), if any, in aforesaid terms.

List for compliance on **23rd September, 2024.**

**(Vivek Singh Thakur)
Judge**

**(Bipin Chander Negi)
Judge**

August 01, 2024 (KS)