
(1999) 1 ShimLC 365

High Court of Himachal Pradesh

Case No: Regular Second Appeal No. 148 of 1998

Devi Singh

APPELLANT

Vs

State of H.P. and
Others

RESPONDENT

Date of Decision: Oct. 30, 1998

Acts Referred:

Limitation Act, 1963 & Article 56#Nautor Rules, 1968 & Rule 12, 30

Citation: (1999) 1 ShimLC 365

Hon'ble Judges: D. Raju, C.J

Bench: Single Bench

Advocate: B.K. Malhotra, for the Appellant; M.L. Chauhan, D.A.G. for Respondent Nos. 1 and 2, for the Respondent

Final Decision: Dismissed

Judgement

D. Raju, C.J.

The above second appeal has been filed by the Plaintiff in Civil Suit No. 147/89 on the file of the Senior Sub Judge, Mandi,

who lost before both the Courts below challenging the judgment and decree passed by the learned Additional District Judge, Mandi dated

1.2.1997 in Civil Appeal No. 59/91 confirming the judgment and decree passed by --the learned trial Judge.

2. Having regard to the facts, which have been brought on record and which have been elaborately and extensively noticed by both the Courts

below in the judgment under challenge, it is unnecessary for this Court to delve at length with the details of the fact except referring to certain salient

facts, namely, the suit came to be filed by the Plaintiff-Appellant for a declaration that the Appellant is owner in possession of the land in dispute

and for a consequential order of injunction restraining the Respondents from interfering with the possession and enjoyment of the land by virtue of

the orders of the Deputy Commissioner and the Divisional Commissioner passed revoking the Nautor grant made in favour of the Appellant. The

case of the Plaintiff was that not only the Appellant was -granted with an assignment under Nautor Rules, but Patta was also granted on 7.1.1987.

While the matter stood thus, some private parties who were aggrieved against the grant being made in favour of the Appellant filed an appeal and

since in that manner it came to light that the Plaintiff-Appellant, who was not entitled to such grant has mis-represented and by practising fraud

obtained the grant in his favour, the Deputy Commissioner by his order dated 29.6.1988 cancelled the Nautor grant. The appeal filed by the

Plaintiff before the Divisional Commissioner was also dismissed on 21.11.1988. A further appeal filed before the Financial Commissioner also

came to be dismissed. It is, therefore, the Appellant has filed the suit for the relief noticed supra. The suit was contested based on the reasons,

which weighed with the authorities of the State to revoke and cancel the Nautor grant obtained by the Appellant. After the trial, the learned trial

Judge came to the conclusion that the Appellant obtained Nautor grant by fraudulent means and, therefore, no exception could be taken to the

orders of cancellation made by the competent authorities. It is useful to extract the findings of the learned trial Judge in this regard in paragraph 7 of

his judgment, which read as follows:

Learned Counsel for the Plaintiff contended that order dated 29.6.1988 of Deputy Commissioner, Mandi and dated 21.11.1988 of Divisional

Commissioner, Mandi cancelling the Nautor of the Plaintiff have been passed after a period of more than two years from the grant of the nautor of

the suit land, by Sub-Divisional Officer (Civil), Mandi on 28.10.1986, and the same are illegal. However, he has not been able to show me any

law as to how aforesaid orders are illegal. It was well within the powers of the Deputy Commissioner Mandi to have cancelled the nautor which

was obtained by the Plaintiff by fraudulent means for the construction of the house under houseless scheme when he was found to be not entitled to

the same being owner of the land 6.17.19 bighas and the house in Muhal Shill Mashora. Plaintiff had himself preferred an appeal against the order

of the Deputy Commissioner to Divisional Commissioner and again before the Financial Commissioner. Both these appeals stand rejected and

mutation No. 1049 dated 28.8.1989 about cancellation of the nautor of the suit land to the Plaintiff has also sanctioned. Plaintiff is a member of the

Panchayat and had obtained nautor by fraudulent means, being so, issue No. 1 is decided against the Plaintiff and in favour of the Defendants.

So far as the claim of the Plaintiff-Appellant challenging the order of cancellation on the ground of limitation is concerned, the same has also been

adverted to by the learned trial Judge and it was held that the plea in this regard also has no merit since the limitation, if any, will start running from

the date on which the authorities which granted the Nautor grant or the higher authorities in the hierarchy came to know of the fraud. The Plaintiff

was also found to be really not in possession of the property granted and it has been held that he had not put any construction thereon. On that

view of the matter, the suit came to be dismissed, which made the Plaintiff to file the appeal in Civil Appeal No. 59 of 1991 before the District

Court. The learned District Judge also concurred with the findings of the learned trial Judge and dismissed the appeal. Hence, the above second

appeal.

3. The learned Counsel for the Appellant while elaborating the points and substantial questions of law proposed to be raised in the grounds of

appeal contended that the Courts below committed an error in assuming that the period of limitation could be condoned even without there being

proper evidence in support thereof and the finding that the land already possessed by the Plaintiff was not in dispute is incorrect and vitiated on

account of mis-reading and non-consideration of vital materials on record and, therefore, the Court below ought to have sustained the suit claim.

4. Mr. M.L. Chauhan, learned Deputy Advocate General, who appeared for Respondent Nos. 1 and 2, after notice of motion was ordered in the

appeal, while adopting the reasons assigned by the Courts below contended that the concurrent findings of fact recorded by both the Courts below

were based on relevant and indisputable materials and such findings of fact, which cannot, according to the learned Counsel for the Respondents,

be successfully challenged are more than sufficient in law to justify the ultimate conclusion arrived at by the Courts below in non-suited the Plaintiff

and consequently there are no merits whatsoever in the above appeal.

5. I have carefully considered the submissions of the learned Counsel appearing on either side. In my view, the claim of the Appellant has no merit

of acceptance for the reason that it not only lacks basis in law but has no support in justice also. Both the Courts below have concurrently found

that the Appellant has mis-used his position, influence and suppressing the relevant vital and material facts and also by practising fraud thereby has

obtained the grant in his favour under the Nautor Rules. His claim though not initially projected but pursued at later stages that the land held by him

was in dispute has not been substantiated and has been found to be a pure after thought. It is useful to advert to paragraph 8 of the judgment of the

learned First Appellate Judge in this regard, which would also show as to how the Appellant, who was not otherwise eligible to have got that grant

for the purpose of construction of the house has manipulated and managed to get the same, and no material whatsoever produced about the so-

called disputed nature of her property. In view of the above, there is no merit whatsoever in the claim of the Appellant pertaining to his eligibility to

get the grant.

6. So far as the question of limitation sought to be raised is concerned, though the authorities came to be activated by an appeal filed by the third

party, which treated as an appeal though might have been filed out of time, the power of the authorities to deal with a case of the nature at any time

when it comes to the notice and the knowledge of the concerned and competent authorities that a particular individual had obtained a grant by

suppressing the relevant and material facts falls under Rule 30 of the Nautor Rules. The scope of the said rule vis-a-vis the point of time within

which such power also could be invoked by the competent authorities came up for consideration in the hands of a Full Bench of this Court in the

decision reported in *Mangheru v. State of Himachal Pradesh and Ors.* ILR 1981 H.P. 283, wherein while construing the words "at any time" and

dealing with the view taken by an earlier Division Bench, which read into those words, a period of one year on the ground that such period must be

considered to be a reasonable period of time to exercise suo motu revisional powers, dis-approved the view taken by the earlier Division Bench

and held as hereunder:

Now, there is no dispute that the peculiar facts and circumstances of each case should determine "a reasonable time". For example, if a grantee

has suppressed material facts or has obtained the allotment by playing a fraud or a deception "the reasonable time" will have to be determined with

reference to the time when the fraud or deception came to light. Various cases where a party had concealed material facts and succeeded in

obtaining the allotment have come to our notice. We cannot allow a party to reap the fruits of his deception or fraud simply on the ground that it

had successfully kept them concealed over a sufficiently long period of time. However, once the fraud is uncovered then action is required to be

taken within a reasonable time thereafter. Article 56 of the Limitation Act lays down a limitation of three years from the date of the knowledge of

fraud, and we are of the opinion that it will be reasonable to lay down that ordinarily within a period of three years from the date of knowledge of

fraud the suo motu powers can be exercised.

7. I am in respectful agreement with the view expressed by the learned Judges of the Full Bench since the question of mis-representation, fraud or deception played by a party in obtaining an undeserved benefit or an order in his favour is a matter within the exclusive knowledge of that party only and any period of limitation even when such limitation is specifically provided for in any statute or statutory rules would commence running against the other side or authority concerned only from the date of knowledge of such fraud or deception or suppression of facts. Thus viewed also, no exception could be taken to the orders passed by the Deputy Commissioner, Divisional Commissioner and the Financial Commissioner in this case. It may also be pointed out that the Rules under consideration also provide for resumption of the land granted under the Nautor Rules in certain circumstance illustrated particularly, in Rule 12 and one such is under Clause (g) of Rule 12, which specifically states that if the grantee secures the sanction of Nautor by suppression of material facts in his Nautor application, it would be a sufficient ground to cancel and resume the land granted. Though the authorities did not specifically purport to invoke the said rule, the powers conferred therein cannot also be lost sight of in adjudicating the legality, propriety and validity of the orders of cancellation of the Nautor grant made in this case. It is by now well settled that if a particular order has been passed, which is being challenged, notwithstanding that such order came to be passed invoking a particular provision or power conferred therein, which if it is found really not relevant or applicable, the exercise of such power in a given case can be traced to the real source of power otherwise obviously shown or found to be available to validate the order. In this case, in my view, even de hors Rule 12(g), the power exercised could be justified under Rule 30 itself and in any event in the teeth of a provision like 12 (g), there is absolutely no scope for the Appellant attempting to challenge the validity of the orders on any ground of limitation or want of power to revoke/cancel the Nautor grant made in his favour.

For all the reasons stated above, in my view, there are absolutely no merits whatsoever in the above second appeal and the same fails and shall stand dismissed.

8. Though not for this case, in future the authorities, in my view, will do well to initiate criminal action to prosecute also the persons, who are found

to have patently mis-represented and played fraud with the Government in undeservedly getting the public property and appropriate instructions

should be issued by the Government to all the authorities concerned in this regard, so that it will act as deterrent for any one in future to grab the

public property by practising fraud under the guise of getting a grant under the Nautor Rules.

CMP No. 247/98:

In view of the dismissal of the main appeal, this application is also dismissed, and the interim order is vacated.