

(2014) 06 SHI CK 0124
High Court of Himachal Pradesh
Case No: CWP No. 4151 of 2014

Sher Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision: June 30, 2014

Hon'ble Judges: Sureshwar Thakur, J; Rajiv Sharma, J

Bench: Division Bench

Advocate: Sanjeev Kuthiala, Advocate for the Appellant; Ramesh Thakur, Assistant
Advocate General, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Sureshwar Thakur, J.

The petitioner has his land in contiguity to the un-demarcated protected forest land. On a complaint having been instituted before the competent authority, demarcation of the land of the petitioner, in, contiguity to the un-demarcated protected forest land, was ordered. It sequelled the preparation of a demarcation report, comprised, in, Annexure P-5. A perusal of Annexure P-5, discloses the fact of the exercises undertaken by the Assistant Collector 2nd Grade, in, demarcating the boundaries of the land owned by the petitioner in contiguity to the un-demarcated protected forest land. He had elucidated in it, the fact of participation of the petitioner, as well, as of the officials of the forest department in the exercise, aforesaid. Annexure P-5 records, the concluded fact of the petitioner, to, the extent as detailed, in, Annexure P-5, having encroached upon the land owned by the Forest Department. Annexure P-5, constrained, the issuance of a valid statutory notice upon the petitioner calling upon him to vacate the encroached land owned by the Forest Department. The petitioner contested the notice comprised in Annexure P-10, issued by the competent authority. His contest failed rather, eviction notice comprised in Annexure P-13, was issued against the petitioner. In appeal, preferred by the petitioner before the Appellate Authority, the Appellate Authority i.e. Divisional Commissioner, Mandi Division, Mandi rendered the order, comprised, in, Annexure

P-15, affirming the findings rendered by the Collector-cum-Divisional forest Officer, Kullu, comprised, in, Annexure P-13.

2. The learned counsel for the petitioner has assailed the findings recorded in Annexure P-5, on, the score that the demarcation exercise, ascertaining or detecting the fact of, his having encroached upon the land of the Forest Department, is, wholly erroneous and unreliable, on the grounds (a) it has been carried out by an unauthorized officer; (b) its having been carried out, in, flagrant violation of the mandate enshrined in H.P. Land Records Manual, qua the manner of carrying out the demarcation of lands, where such lands are respectively owned by private individuals and are in contiguity to the lands owned by the Forest Department, in as much, as, the demarcating officer had omitted to ascertain or fix/determine the permanent points, before proceeding to carry out the demarcation of the land of the petitioner adjoining to and contiguous to the land owned by the Forest Department; and (c) Notice Annexure P-10, is flawed, in as much, as, its bearing an incomplete data, hence, in face thereof, the further proceedings initiated against the petitioner on strength thereto consequently, too, are rendered fallible.

3. The contention of the learned counsel for the petitioner in impeaching and assailing the tenacity of the demarcation report, comprised in Annexure P-5, on the score of it having been carried out by an incompetent and ineligible demarcating officer, in as much, as, it having been carried out by Assistant Collector, 2nd Grade, who could not render any demarcation, in view of the fact, of, the contemplated demarcation being with respect to private land of the petitioner, in, contiguity to the land owned by the Forest Department, is, rendered wholly rudderless, in, the face of the instructions dated 13th September, 2012 as issued by the Additional Chief Secretary (Revenue) to the Government of Himachal Pradesh, which convey that where the contemplated demarcation is of private land, in contiguity with the land owned by the Forest Department, then the carrying out the demarcation by the Assistant Collector 2nd Grade would, not illegitimise rather, would legitimise such demarcation. Further more, the fact of demarcation report, highlighting the presence of the petitioner at the time of carrying out of demarcation, estops the petitioner from contending that, it, is a unilateral demarcation. Besides when the petitioner omitted, at any stage, either before the competent authority, who, in pursuance to the receiving of the demarcation report, initiated the proceedings under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act nor before the Appellate Authority, to raise the plea, that the demarcation carries no legal force, in view of it having carried out behind his back, now, estops the petitioner from contesting its legitimacy on the score aforesaid, at, this belated stage.

4. Moreover, a perusal of the demarcation report, records the fact of the demarcating officer, who rendered, it, having, prior to his proceeding to measure/demarcate the boundaries of the land of the petitioner contiguous to the forest land, ascertained, as well as, established permanent points. Now given the

fact that before, the demarcating officer had proceeded to carry out the demarcation of the land of the petitioner, adjoining to the land of the Forest Department, he had previously reckoned or determined the fixed/permanent points. Moreover, when the petitioner has been divulged in Annexure P-5 to be present on the spot, during the demarcation proceedings, hence, where there is no palpable and imminent protest, manifesting any illegality or impropriety on the part of the demarcating officer in carrying out the proceedings, emerging at the appropriate stage on the part of the petitioner, hence, in absence, thereof, this Court is constrained to permit the petitioner, at this belated stage, to, contest that the demarcation report is flawed, on the ground that the demarcating officer having proceeded to demarcate the land of the petitioner adjoining to the land of the Forest Department, without establishing or ascertaining the fixed points or his having committed any other patent illegality or impropriety, prohibited, by the provisions relating to demarcation, as envisaged under the Himachal Pradesh Land Records Manual.

5. The learned counsel for the petitioner proceeds to lastly make a frail and feeble attempt to denounce the demarcation report portraying the fact of his having encroached upon the land of the Forest Department, on, the score of the demarcation having been ordered, in, counter blast to the revelation in Annexure P-7, of the IPH Department having encroached upon the land of the petitioner. However, even if, it be so, for the clinching reasons hereinabove emphatically and forcefully pronouncing upon the fact of encroachment of the land of the Forest Department by the petitioner, the said contention fades into the limbo of oblivion. Even, the contention of the learned counsel for the petitioner that the notice which engendered further proceedings against the petitioner is flawed capsizes in the face of the revelation, in the valid and statutory notice, of the entire details pertaining to the suit property. More so, the entire proceedings against the petitioner, being preceded by a valid and statutory notice, it also, hence, debars the petitioner from contending that the initiation of proceedings, commenced against the petitioner for vacating the land in dispute, lack in legal force, without the issuance, by the competent authority of, a valid and statutory notice upon him.

6. In view of above discussion, the writ petition is dismissed. No costs.

7. All the pending miscellaneous applications also stand disposed of.