

(2016) 01 SHI CK 0079

High Court of Himachal Pradesh

Case No: CWP No. 61 of 2016

Ashok Kumar

APPELLANT

Vs

State of H.P. and
others

RESPONDENT

Date of Decision: Jan. 5, 2016

Acts Referred:

- Constitution of India, 1950 - Article 226
- Himachal Pradesh Panchayati Raj Act, 1994 - Section 122

Citation: (2016) 2 HimLR 807 : (2016) ILRHP 245

Hon'ble Judges: Mr. Mansoor Ahmad Mir, C.J. and Mr. Tarlok Singh Chauhan, J.

Bench: Division Bench

Advocate: Mr. Dushyant Dadwal, Advocate, for the Appellant; Mr. Shrawan Dogra, Advocate General, with Mr. Anup Rattan and Mr. Romesh Verma, Addl.A.Gs. and Mr. J.K. Verma, Dy.A.G and Ms. Nishi Goel, Advocate, for the Respondent

Final Decision: Dismissed

Judgement

Mansoor Ahmad Mir, C.J. (Oral) - The petitioner, by the medium of the instant writ petition, has questioned the rejection order, dated 30th December, 2015, made by respondent No.4, on the ground that the father of the petitioner has not encroached upon any Government land. The petitioner has also annexed along with the writ petition a copy of the application, dated 31st July, 2002, whereby the father of the petitioner had sought regularisation of the encroachment over the Government land.

2. It is apt to record herein that the petitioner has filed reply to the objections before respondent No.4, wherein in paragraphs No.3 and 4, it was specifically contended by the petitioner that the father of the petitioner never applied for regularisation of encroachment. It is apt to reproduce paragraphs No.3 and 4 hereunder:

"3. That the objections are not supported with any copies of the alleged application. The father of the replying respondent never applied for regularisation of any encroachment as alleged in the report of the Patwari Halqa Baijnath annexed with the objections.

4. That no proceedings under section 163 or any other law were ever initiated against the father of the replying respondent nor he was ever evicted from any Government land during his life time."

3. Thus, paragraphs 3 and 4, referred to herein above, are contradictory to the application moved by the father of the petitioner in the year 2002.

4. Section 122(1)(c) of the Himachal Pradesh Panchayati Raj Act, 1994, (for short, the Act), specifically provides that a person would be disqualified for being elected an office bearer of a Panchayat in case he or any of his family member(s) has encroached upon any Government land. It is apt to reproduce Clause (c) of Sub Section (1) of Section 122 of the Act, hereunder:

"122. Disqualifications. 1/2 (1) A person shall be disqualified for being chosen as, and for being, an office bearer, of a Panchayat 1/2

(a) 1/2 1/2.. 1/2 1/2 1/2 1/2 1/2. 1/2 1/2 1/2 1/2

(b) 1/2 1/2 1/2.. 1/2 1/2 1/2 1/2 1/2.. 1/2 1/2 1/2 1/2.

(c) if he or any of his family members(s) has encroached upon any land belonging to, or taken on lease or requisitioned by or on behalf of, the State Government, a Municipality, a Panchayat or a Co-operative Society unless a period of six years has elapsed with the date on which he or any of his family member, as the case may be, is ejected therefrom or ceases to be the encroacher. 1/2 1/2 1/2 1/2.. 1/2 1/2 1/2 1/2 1/2 1/2 1/2 1/2 1/2 1/2."

5. Having said so, there is no merit in the writ petition and the same is dismissed in limine, along with pending CMPs, if any. However, the petitioner is at liberty to seek appropriate remedy at appropriate stage.