



Harnam Singh vs. State of H.P. & ors.

CWP No. 3821/2021

3.11.2022 Present: Mr. Ajay Sharma, Sr. Advocate with Mr. Athrav Sharma, Advocate, for the petitioner.

Mr. Ashok Sharma, A.G. with Mr. Vinod Thakur, Addl. A.G., Mr. J.S. Guléria, Bhupinder Thakur Dy.A.Gs. & Mr. Rajat Chauhan, Law Officer, for respondents-State.

On 20.10.2022, this Court passed the following order:-

“Para 4 of the affidavit filed on 2nd March, 2022 reads as under:-

“4. That as per annexure R-1, out of a total of 2097 no. of encroachments, 659 no. encroachments have been removed completely and 21 no. of encroachments have been removed partially. Out of remaining 1417 cases, 6 no. of cases are pending with Civil Judge Sr. Division(s), 3 no. of cases are pending with Civil Judge Jr. Division(s), 400 no. of cases are pending with SDM(s), 876 no. of cases are pending with Revenue authorities, 15 no. of cases are pending with the Hon'ble High Court, 5 no. are pending with Divisional Commissioners(s) concerned, and now 112 no. of cases are pending with Public Works Department.”

Fresh affidavit has been filed today in the Court and para 4 thereof reads as under:-

“4. That as per annexure R-1, out of a total of 2097 no. of encroachments, 682 no. of encroachments have been removed completely and 21 no. of encroachments have been removed partially. Out of remaining 1394 cases, 6 no. of cases are pending with Civil Judge Sr. Division(s), 3 no. of cases are pending with Civil Judge Jr. Division(s). And now 377 no. of cases

are pending with SDM(s). 876 no. of cases are pending with Revenue authorities, 15 no. of cases are pending with the Hon'ble High Court, 5 no. of cases are pending with Divisional Commissioners (s) concerned and 112 no. of case are pending with Public Works Department.”

It would be noticed from a bare perusal of the aforesaid affidavits that much progress has not been made by the Department with regard to eviction of the encroachers.

This is what prompted us to call for the personal presence of Mr. Ajay Gupta, Engineer-in-Chief, PWD, who has assured us that appropriate and prompt action shall be taken for evicting other encroachers. He further states that in few cases, more particularly, in Theog area where the eviction orders though have been passed against the encroachers, the encroachers have not been evicted solely because of lack of co-ordination and cooperation between the Departments, more particularly, the police and revenue authorities.

Mr. Gupta also points out that in more than 800 cases, where though the eviction orders have been passed, but eviction has not been carried out, as the revenue agencies are not co-operating for one reason or the other.

The details of all such kind of cases be also furnished so that appropriate orders in this regard can be passed. Another difficulty pointed out by Mr. Gupta is that the cases pending before the revenue authorities are not making much progress because the same are not being taken up promptly but after long lapse of time. Let the details of such cases be also furnished before the next date of hearing.

We have absolutely no doubt in our mind that in case the orders of eviction have attained finality, then the encroachers cannot squat on the land belonging to the Government even for a second. Therefore, the respondents are directed to file the list of all such cases

where the orders of evictions have attained finality and yet the encroachers are still squatting on the land in question within a period of one week.

Having examined the matter thoroughly, we are of the considered view that instead of repeatedly passing directions regarding the encroachments made on the Highways, the Highway authorities itself could plan to construct road side eateries and provide all other amenities, after all, the majority of the encroachments are for the purpose of making stalls/shops, Dhabas etc. These road side eateries could be leased/rented out. Apart from the shops and other commercial establishments, the provisions of toilet etc. could also be made.

Mr. Ajay Gupta, has assured this Court that he would be taking up the matter with the Government. We expect the Government to be sensitive on this issue, after all, the State lacks or rather does not have any basic road side amenities, more particularly, the provisions of toilets on any of the Highways.

List on 3rd November, 2022. Personal presence of Mr. Ajay Gupta, Engineer-in-Chief, PWD is dispensed with for the time being.”

2 In compliance to the aforesaid order, Engineer-in-Chief, HPPWD has filed his affidavit, according to which, there are as many as 472 cases of encroachments -134 in Shimla, 240 in Mandi Zone and 98 in Hamirpur Zone- that have been detected by the respondent-Department on the acquired width and the encroachers have also been directed or ordered to remove the encroachment, however encroachers could not be evicted for want of demarcation by the revenue agency, details of such cases have been annexed as Annexure A-1 with the affidavit.

3 We really wonder why the respondent-department is waiting for the demarcation to be conducted when admittedly as per its own case, the encroachments have been made on the acquired width of the roads.

4 It is more than settled that all lands, which are not the property of any person or which are not vested in a local authority, belong to the Government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the Government is not available to any person or individual. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit or any other proceeding against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit or any other proceeding for title against the Government. This follows from Article 112 of the Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by Government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire State and it is not always possible for the Government to protect or safeguard its properties from encroachments.

5 The onus to prove title to unoccupied lands, belonging to the Government is on the private parties. Such lands are presumed to be Government land and weakness in Government's defence or absence of contest are not sufficient

to grant declaratory or injunctive decrees against the Government by relying upon one of the principles underlying pleadings, that the averments contained therein have not been denied or traversed are deemed to have been accepted or admitted. Similarly, the rights, entitlement and presumption of title is clearly in favour of the Government and has, therefore, to be distinguished from those of private parties.

6 Similar issue came up before the Hon'ble Supreme Court in **R. Hanumaiah and another vs. Secretary to Government of Karnataka, Revenue Department and others (2010) 5 SCC 203**. It is apt to reproduce the relevant observations, which read thus:-

“Nature of proof required in suits for declaration of title against the Government.

19. Suits for declaration of title against the government, though similar to suits for declaration of title against private individuals differ significantly in some aspects. The first difference is in regard to the presumption available in favour of the government. All lands which are not the property of any person or which are not vested in a local authority, belong to the government. All unoccupied lands are the property of the government, unless any person can establish his right or title to any such land. This presumption available to the government, is not available to any person or individual. The second difference is in regard to the period for which title and/or possession have to be established by a person suing for declaration of title. Establishing title/possession for a period exceeding twelve years may be adequate to establish title in a declaratory suit against any individual. On the other hand, title/possession for a period exceeding thirty years will have to be established to succeed in a declaratory suit

for title against government. This follows from Article 112 of Limitation Act, 1963, which prescribes a longer period of thirty years as limitation in regard to suits by government as against the period of 12 years for suits by private individuals. The reason is obvious. Government properties are spread over the entire state and it is not always possible for the government to protect or safeguard its properties from encroachments. Many a time, its own officers who are expected to protect its properties and maintain proper records, either due to negligence or collusion, create entries in records to help private parties, to lay claim of ownership or possession against the government. Any loss of government property is ultimately the loss to the community. Courts owe a duty to be vigilant to ensure that public property is not converted into private property by unscrupulous elements.

20. Many civil courts deal with suits for declaration of title and injunction against government, in a casual manner, ignoring or overlooking the special features relating to government properties. Instances of such suits against government being routinely decreed, either *ex parte* or for want of proper contest, merely acting upon the oral assertions of plaintiffs or stray revenue entries are common. Whether the government contests the suit or not, before a suit for declaration of title against a government is decreed, the plaintiff should establish, either his title by producing the title deeds which satisfactorily trace title for a minimum period of thirty years prior to the date of the suit (except where title is claimed with reference to a grant or transfer by the government or a statutory development authority), or by establishing adverse possession for a period of more than thirty years. In such suits, courts cannot, ignoring the presumptions available in favour of the government, grant declaratory or injunctive decrees against the government by relying upon one of the principles underlying pleadings that plaintiff averments which are

not denied or traversed are deemed to have been accepted or admitted.

21. A court should necessarily seek an answer to the following question, before it grants a decree declaring title against the government : whether the plaintiff has produced title deeds tracing the title for a period of more than thirty years; or whether the plaintiff has established his adverse possession to the knowledge of the government for a period of more than thirty years, so as to convert his possession into title. Incidental to that question, the court should also find out whether the plaintiff is recorded to be the owner or holder or occupant of the property in the revenue records or municipal records, for more than thirty years, and what is the nature of possession claimed by the plaintiff, if he is in possession - authorized or unauthorized; permissive; casual and occasional; furtive and clandestine; open, continuous and hostile; deemed or implied (following a title).

22. Mere temporary use or occupation without the animus to claim ownership or mere use at sufferance will not be sufficient to create any right adverse to the Government. In order to oust or defeat the title of the government, a claimant has to establish a clear title which is superior to or better than the title of the government or establish perfection of title by adverse possession for a period of more than thirty years with the knowledge of the government. To claim adverse possession, the possession of the claimant must be actual, open and visible, hostile to the owner (and therefore necessarily with the knowledge of the owner) and continued during the entire period necessary to create a bar under the law of limitation. In short, it should be adequate in continuity, publicity and in extent. Mere vague or doubtful assertions that the claimant has been in adverse possession will not be sufficient. Unexplained stray or sporadic entries for a year or for a few years will not be sufficient and should be ignored.

23. As noticed above, many a time it is possible for a private citizen to get his name entered as the occupant of government land, with the help of collusive government servants. Only entries based on appropriate documents like grants, title deeds etc. or based upon actual verification of physical possession by an authority authorized to recognize such possession and make appropriate entries can be used against the government. By its very nature, a claim based on adverse possession requires clear and categorical pleadings and evidence, much more so, if it is against the government. Be that as it may.”

7 Similar reiteration of law can be found in one of the latest judgments of the Hon'ble Supreme Court in **State of A.P. vs. A.P. State Wakf Board, 2022 SCALE 321.**

8 Even otherwise, this aspect of the matter has already been considered by a division bench of this Court, in a judgment, authored by one of us (Justice Tarlok Singh Chauhan) in case titled **Pancham Chand vs. The State of H.P. & anr., 2016 (4) ILR (HP) 1715**, wherein it proceeded to observe as under:-

11. As regards, the grievance of the petitioner regarding demarcation, suffice it to say that if, at all, the petitioner was serious about the same not being conducted in accordance with law, then nothing prevented him from filing an application before the Collector or the appellate authority or even before this Court for getting the land demarcated in accordance with law. Having failed to do so, the petitioner cannot now turn around and question the same.

12. The Court is dealing with public property and wherein the public has interest and it is more than settled that private interest must yield to public interest.

13. It has to be remembered that the right and title of the State cannot be permitted to be destroyed so as to give an upper hand to the encroachers, unauthorized occupants or land grabbers as held by the Hon'ble Supreme Court in *Mandal Revenue Officer vs. Goundla Venkaiah and another* (2010)2 SCC 461 wherein it was held as under:-

47. In this context, it is necessary to remember that it is well nigh impossible for the State and its instrumentalities including the local authorities to keep every day vigilance/watch over vast tracts of open land owned by them or of which they are the public trustees. No amount of vigil can stop encroachments and unauthorised occupation of public land by unscrupulous elements, who act like vultures to grab such land, raise illegal constructions and, at times, succeeded in manipulating the State apparatus for getting their occupation/possession and construction regularized. It is our considered view that where an encroacher, illegal occupant or land grabber of public property raises a plea that he has perfected title by adverse possession, the Court is duty bound to act with greater seriousness, care and circumspection. Any laxity in this regard may result in destruction of right/title of the State to immovable property and give upper hand to the encroachers, unauthorized occupants or land grabbers.

48. In *State of Rajasthan v. Harphool Singh (Dead) through Lrs.* 2000 (5) SCC 652, this Court considered the question whether the respondents had acquired title by adverse possession over the suit land situated at Nohar-Bhadra Road at Nohar within the State of Rajasthan. The suit filed by the respondent against his threatened dispossession was decreed by the trial Court with the finding that he had acquired title by adverse possession. The first and second appeals preferred by the State Government were dismissed by the lower appellate Court and the High Court respectively. This Court reversed the judgments and decrees of the courts below as also of the High Court and held that the plaintiff-

respondent could not substantiate his claim of perfection of title by adverse possession. Some of the observations made on the issue of acquisition of title by adverse possession which have bearing on this case are extracted below:-

"12. So far as the question of perfection of title by adverse possession and that too in respect of public property is concerned, the question requires to be considered more seriously and effectively for the reason that it ultimately involves destruction of right/title of the State to immovable property and conferring upon a third-party encroacher title where he had none. The decision in *P. Lakshmi Reddy v. L. Lakshmi Reddy* adverted to the ordinary classical requirement -- that it should be *nec vi, nec clam, nec precario* -- that is the possession required must be adequate in continuity, in publicity and in extent to show that it is possession adverse to the competitor. It was also observed therein that whatever may be the animus or intention of a person wanting to acquire title by adverse possession, his adverse possession cannot commence until he obtains actual possession with the required animus."

49. A somewhat similar view was expressed in *A.A. Gopalakrishnan v. Cochin Devaswom Board* 2007 (7) SCC 482. While adverting to the need for protecting the properties of deities, temples and Devaswom Boards, the Court observed as under:-

"The properties of deities, temples and Devaswom Boards, require to be protected and safeguarded by their trustees/archakas/shebaita/employees. Instances are many where persons entrusted with the duty of managing and safeguarding the properties of temples, deities and Devaswom Boards have usurped and misappropriated such properties by setting up false claims of ownership or tenancy, or adverse possession. This is possible only with the passive or active collusion of the authorities concerned. Such acts of "fences eating the crops" should be dealt with sternly. The Government, members or trustees of boards/trusts, and devotees

should be vigilant to prevent any such usurpation or encroachment. It is also the duty of courts to protect and safeguard the properties of religious and charitable institutions from wrongful claims or misappropriation."

14. *As observed earlier, the petitioners are rank encroachers and after making large scale encroachments have turned the litigation into fruitful industry, by succeeding in protecting their illegal possession and reaping the usufruct out of the land, which as per their own admission comprises of apple orchard. This illegal possession cannot be permitted to continue. Therefore, it is the duty of the court to see that such wrongdoers are discouraged at every stage and even if they have succeeded in prolonging the litigation, then they must suffer the costs of all these years and also bear the expenses of such unwanted and otherwise avoidable litigation.*

9 In view of the aforesaid exposition of law, the onus is upon the encroacher(s), to either prove his/her entitlement or title by adverse possession and having failed to do so, encroacher(s) is/are liable to be evicted and such eviction cannot be stalled only for want of demarcation.

10 In the given facts and circumstances, the respondent-Department is directed to remove the encroachment(s), details whereof are mentioned in Annexures appended with the affidavit, within four weeks and the Deputy Commissioner(s) as also Superintendent(s) of Police of the concerned District(s) are directed to render all necessary help including adequate police help at the time of removal of encroachments.

11 As regards developing the wayside amenities/toilets etc. on the highways, this issue will be taken up for consideration on the next date of hearing, when fresh compliance report be filed by respondent No.2.

12 List on 1.12.2022.

(Tarlok Singh Chauhan)
Judge

(Virender Singh)
Judge

3.11.2022
(pankaj)

High Court

High Court of H.P.