



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MMO No. 136 of 2019

Date of decision: 19.12.2023

General Public through villagers of Hodal.

...Petitioner.

Versus

Rishi Gupta and others.

...Respondents.

Coram

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

Whether approved for reporting? ¹ Yes.

For the Petitioner:

***Mr.Ajay Sharma, Senior Advocate, alongwith
Mr.Atharv Sharma, Advocate.***

For the Respondents:

***Respondents are ex parte vide order dated
12.8.2021.***

Vivek Singh Thakur, Judge

Present petition has been preferred, invoking provisions of Section 482 of the Code of Criminal Procedure (for short "Cr.P.C.") against order dated 24.10.2018 passed in Criminal Revision No. 13-D/X of 2013 by Additional Sessions Judge-III, Kangra at Dharamshala, whereby order dated 8.4.2013 passed by Sub Divisional Collector, Dharamshala, District Kangra in Case No. 118 of 2010, has been set aside.

2. Brief facts of present case are that petitioner/complainant filed an application under Section 133 of Cr.P.C. before Sub Divisional Magistrate (SDM), against respondents, for removal of obstruction on the path, creating nuisance in Khasra No. 88, Khata No. 104, Kita No. 103 with entry "Gair Mumkin Rasta", situated in Mohal Hodal, Mauza Ghaniyara, Tehsil Dharamshala, District Kangra, as recorded in the jamabandi for the year 2006-07.

Whether the reporters of the local papers may be allowed to see the judgment? Yes

3. After issuing notice to respondents and providing opportunity for their defence, considering the material on record, including field report of Assistant Collector 1st Grade (Tehsildar), Dharamshala, Sub Divisional Magistrate, by passing order dated 17.4.2013, allowed the complaint and directed the respondents to remove the obstruction of both sides of path of the land referred supra.

4. Revision preferred by respondents has been allowed by Additional Sessions Judge-II, Kangra at Dharamshala by passing impugned order dated 24.10.2018.

5. Respondents were duly served, but they have chosen to be unrepresented in present petition.

6. Submissions of learned counsel for the petitioner have been heard and record of the Courts below has also been perused.

7. It has surfaced from the record, as also referred by the Sub Divisional Magistrate in his order, that the land in reference is in the ownership of respondents, but with entry of "Gair Mumkin Rasta Shareyam" and the said land has been covered by the respondents by constructing wall and Iron Gate. There was civil litigation pending in the Civil Court with respect to Khasra No. 88, the land in reference, wherein complainant Bidhi Chand and his father were defendants. The said fact was also recorded by the Sub Divisional Magistrate in his order, but for want of any stay order, he proceeded to pass the order dated 17.4.2013.

8. Respondents are claiming their right of ownership on the property. Before Courts below it was contended on behalf of respondents that as per spot position passage exists through Khasra Nos. 56 and 57, which were owned by the State of H.P., but father of complainant Bidhi Chand, i.e. Ishwar Dass was trying to encroach the same and he had filed a Civil Suit No. 340/10 of 2009, titled Ishwar Das Vs. Rishi Gupta and others

and in the said suit Ishwar Dass had admitted that State was owner of land compromised in Khasra Nos. 56 and 57, but with claim of possession thereon. Copy of statement of Ishwar Dass was also placed on record before the Sub Divisional Magistrate alongwith copy of plaint of the suit filed by Ishwar Dass, seeking decree of permanent injunction against the respondents with respect to Khasra Nos. 56 and 57.

9. An application filed by respondents before the Settlement Collector, Kangra for correction of revenue entries with respect to Khasra No. 88 was also placed before the Sub Divisional Collector, whereby prayer had been made to correct the entries in column of possession and regarding its nature.

10. From the record, it is apparent that at the time of passing of order by Sub Divisional Magistrate (SDM), another suit with respect to the same land comprised in Khasra no. 88 was pending in the Civil Court. Not only this, there was dispute between the parties, as to whether public path passes through Khasra No. 88 (owned by respondents) or through Khasra No. 56 and 57 (owned by State of H.P.) and two different civil litigations were going on between the parties.

11. It is settled that verdict of Civil Court shall have precedence over the orders passed in proceedings adjudicated by the Magistrate under the Code of Criminal Procedure. When matter was pending adjudication with respect to the same land before the Civil Court, with the same claims and counter claims, between the same parties, it was not proper for Sub Divisional Collector to pass an order in a complaint purported to have been filed by villagers but actually by one individual Bidhi Chand who was in civil litigation with respondents. It was apparent from the record that it was a private dispute between the parties, where family of complainant was trying to establish their right of ownership on the basis of alleged long possession

over Government land, comprised in Khasra Nos. 56 and 57 with an attempt to shift the path to Khasra No. 88 on the basis of entry of "Shareyam Rasta", alleged to be wrong entry by respondents, but with ownership of respondents. In such circumstances Sub Divisional Magistrate ought not to have passed an order like order passed in present case, but should have relegated the parties to the Civil Court to obtain appropriate order.

12. For the material on record, I do not find any illegality, irregularity or perversity in the impugned order dated 24.10.2018 passed by Additional Sessions Judge-III, Kangra at Dharamshala, rather the same is based on proper appreciation of material on record and pronouncements of the Courts referred in the order and, therefore, I do not find any reason to exercise jurisdiction under Section 482 Cr.P.C. for interfering in the impugned order.

Accordingly, petition is dismissed alongwith pending application(s), if any.

19th December, 2023
(Keshav)

(Vivek Singh Thakur),
Judge.