

**IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.**

CWP No. 6609/2013

Reserved on: 3.4.2014

Decided on: 7.4.2014

Pritam Chand. ...Petitioner.
Versus
State of Himachal Pradesh and others. ...Respondents.

Coram:

Hon'ble Mr. Justice Rajiv Sharma, Judge.

Whether approved for reporting? ¹ Yes

For the Petitioner : Ms. Archana Dutt, Advocate.

**For the Respondents: Mr. M.A. Khan, Additional Advocate
General for respondent No.1 to 3.**

**Mr. Ajay Sharma, Advocate for
respondent No.4.**

None for other respondents.

Justice Rajiv Sharma, Judge.

Election to the post of Up-Pradhan, Gram Panchayat, Badhal, Tehsil Dehra, District Kangra were held on 28.12.2010. Petitioner was declared elected by difference of one vote. Election of petitioner was challenged by respondent No.4 by filing Election Petition bearing No. 21/EP/2011 before the Sub Divisional Officer (Civil), Dehra. He allowed the petition on 16.1.2012. The

¹ Whether reporters of the local papers may be allowed to see the judgment? yes

Sub Divisional Officer (Civil), Dehra declared the petitioner to be encroacher on Government land. In view of this petitioner was disqualified to contest the Panchayat Election under section 122 (1) (c) of the Himachal Pradesh Panchayati Raj Act, 1994. Election of the petitioner as Up-Pradhan, Gram Panchayat Bhadal was declared void and set aside. Petitioner assailed the order dated 16.1.2012 before the Deputy Commissioner, Kangra. He dismissed the same on 6.5.2013. Hence, the present petition.

2. Ms. Archana Dutt has vehemently argued that Sub Divisional Officer (Civil), Dehra and Deputy Commissioner, Kangra have not construed notification dated 28.11.2000 in right perspective. She then contended that her client never encroached upon the Government land comprised in Khasra No.347/1 measuring 0-14-17 hectares. She further contended that no proceedings have ever been initiated against the petitioner for encroachment on Government land. According to her, the Government is owner of the land and the land is recorded as **Jangal Mehfooza Gair Mehdooda**.

3. Mr. M.A. Khan, learned Additional Advocate General and Mr. Ajay Sharma have supported the orders passed by both the authorities below.

4. I have heard the learned counsel for the parties and have perused the pleadings carefully.

5. Election to the post of Up-Pradhan, Gram Panchayat, Badhal was held on 28.12.2010. It is not in dispute that petitioner was elected as Up-Pradhan. Respondent No.4 has assailed the election of petitioner to the post of Up-Pradhan on the ground that he has encroached upon the Government land, and thus, he was disqualified to contest the election. There was improper reception of votes at the time of election. Initially, A.R.O. had declared respondent No.4 as elected but after sometime, A.R.O. changed version and declared the petitioner as elected. The petitioner was duly served in the proceedings.

6. PW-1 Yagya Dutt and PW-2 Ashok Kumar have led their evidence by filing their affidavits. According to them, petitioner has encroached upon the Government land comprised in Khasra No. 347/1 measuring 0-14-17 hectares. He had in fact applied for regularization of encroachment. The record from the Tehsil Office through Smt. Naresh Kumari was called for. Petitioner had

submitted an application Ex.PW-3/A for regularization and he appended his signatures on the application. Petitioner has also examined two witnesses. According to him, he has not encroached upon the Government land. He has got the land demarcated from Field Kanungo and Patwari. According to them, no encroachment was found. RW-2 Saroop Singh, Kanungo has deposed that he has carried out the demarcation of Khasra Nos. 346, 348 and 349. He has categorically testified that he has not undertaken the demarcation of Khasra No. 347, i.e. subject matter of the case.

7. Ms. Archana Dutt has vehemently argued that authorities below have failed to take into consideration notification dated 28.11.2000 whereby it is notified that a person is not disqualified unless there is a decision on the encroachment.

8. In the instant case, instructions would not apply in the case of petitioner. Petitioner himself has admitted that he has encroached upon the Government land and he has applied for regularization vide application Ex.PW-3/A. He has put his signatures on Ex.PW-3/A, as noticed hereinabove. In this case, the encroachment is not in dispute since the petitioner has voluntarily admitted that he has encroached upon the Government

land. There was no occasion for him to seek regularization of the Government land in case he had not encroached upon the Government land. A person, who has encroached upon the Government land, is disqualified to contest election as per section 122 (1) (c) of the Himachal Pradesh Panchayati Raj Act, 1994 (hereinafter referred to as the "Act" for convenience sake). It is evident from the plain reading of section 122 (1) (c) of the Act that if a person or any of his family member(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 since the date on which he or any of his family member, as the case may be, is ejected there from or ceased to be the encroacher shall be disqualified for being chosen, as and for being, an office bearer, of Panchayat.

9. Moreover, the rigours of section 122 (1) (c) cannot be diluted by the instructions issued on 28.11.2000. Intention of the legislation is to curb encroachments on Government land. The menace of encroachment on the Government land has assumed alarming proportion. Section 122 (1) (c) has been incorporated to curb this tendency of encroachments

made on Government land by unscrupulous persons. The Government land belongs to all and all out efforts must be made to protect the same. PW-1 Yagya Dutt and PW-2 Ashok Kumar have categorically deposed that petitioner has encroached upon the Government land comprised in Khasra No.347/1 measuring 0-14-17 hectares. He himself has submitted an application for regularization. The finding of fact recorded by both the authorities cannot be interfered in the writ jurisdiction. There is neither any perversity nor any illegality in the orders passed by both the authorities below. The authorities below have correctly appreciated oral as well as documentary evidence led by the parties.

10. Accordingly, in view of analysis and discussion made hereinabove, there is no merit in the petition and the same is dismissed. Pending application(s), if any, also stands disposed. No costs.

**(Justice Rajiv Sharma),
Judge.**

7.4. 2014
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