



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

Execution Petition No. 4/1991
Decided on: 18.07.2026

State of H.P.

.....Petitioner

Versus

Narender Singh

.....Respondents

.....
Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner:

Mr. Y.P.S. Dhaulta, Additional
Advocate General for the
petitioners/decreed holders.

For the respondents:

Mr. Neeraj Gupta, Sr. Advocate with
Mr. Ajeet Pal Singh Jaswal,
Advocate, for the judgment debtor.

Ms. Shreya Chauhan, Advocate, for
the intervener.

Jyotsna Rewal Dua, J

Heard learned counsel for the parties and considered the
case file.

2. From the pleadings and joint submissions made by
learned counsel for the parties, following facts emerge: -

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



2(i) Sh. Devi Dass, predecessor-in-interest of the judgment debtor, was in occupation of the land to the extent of 114-6 bighas in Village Jungle Mehduda, Mashobra, District Shimla, H.P., as a tenant under the erstwhile Ruler of Koti State. The settlement operations took place in the aforesaid revenue estate in the year 1949-50, wherein Sh. Durga Singh, S/o Sh. Devi Dass, was shown in occupation of 74 bighas, 12 biswas of land comprised in Khasra Nos. 23 and 27 in the aforesaid revenue estate.

2(ii) An application moved by Sh. Durga Singh for conferment of proprietary rights over the aforesaid Khasra Nos. 23 and 27 measuring 74-12 bighas under Section 11 of the H.P. Abolition of Big Landed Estates and Land Reforms Act was allowed by the Compensation Officer, Mahasu. Sh. Durga Singh was conferred proprietary rights over the aforesaid land on payment of Rs. 450.08 as compensation. Sh. Durga Singh deposited the compensation amount on 11.10.1957. Patta was issued in his favour on 12.11.1957.

2(iii) Sh. Durga Singh, intending to raise an orchard over the above-described land, sought demarcation and conveyed his intention to the State Forest Department. The orchard was eventually raised by him. In June, 1959, the Forest Department claimed part of such orchard, to the extent of 17-7 bighas, to be forest land comprised in Khasra No. 22. The Forest Department alleged encroachment by Sh. Durga Singh over 17-7 bighas of land. This was disputed by Sh. Durga



Singh, claiming that the land measuring 17-7 bighas was his own land and that the orchard had been raised by him over the said land; He had not encroached upon any portion of Khasra No. 22; The demarcation carried out by the department was not in accordance with law and procedure.

The dispute between the Forest Department and Sh. Durga Singh was that the Forest Department claimed 17-7 bighas of land in possession of Sh. Durga Singh to be part of Khasra No. 22, whereas Sh. Durga Singh claimed it to be part of his own land comprised in Khasra Nos. 23 and 27, in respect of which proprietary rights had been conferred upon him by the Compensation Officer under Section 11 of the H.P. Abolition of Big Landed Estates and Land Reforms Act and qua which Patta had been issued in his favour on 12.11.1957.

2(iv) The State did not accept the contention of Sh. Durga Singh and ejectment proceedings were initiated against him under Section 163 of the H.P. Land Revenue Act in respect of 17-7 bighas on the basis of the demarcation conducted by the Naib Tehsildar. An ejectment order was passed by the Collector (Mahasu), District Shimla, on 16.02.1962, wherein 17-7 bighas of land was described as comprised in Khasra Nos. 22/2, 22/3, 22/4 and 22/5. Revenue Appeal No. 3 of 1962 filed by Sh. Durga Singh was dismissed by the Financial Commissioner, Himachal Pradesh, on 07.06.1962.



2(v) The ejectment order having been confirmed against Sh. Durga Singh qua 17-7 bighas of land in his possession, treating it to be part of Khasra No. 22, he instituted Civil Suit No. 21/1 of 1965 (***Durga Singh vs. Union of India***), challenging the concurrent orders of ejectment passed by the Revenue Authorities. A compromise was arrived at in the civil suit, whereunder Sh. Durga Singh agreed to transfer 17-7 bighas of land out of his ownership land in Khasra No. 27 to the State in exchange for an equivalent area of land in Khasra No. 22. The compromise was accepted by the Court of learned Senior Civil Judge, Mahasu, and the suit was decreed on 04.05.1968. The order of ejectment was set aside. The State was restrained from disturbing the possession of Sh. Durga Singh over the land measuring 17-7 bighas. A declaration was also granted that Sh. Durga Singh was not an encroacher over the land comprised in Khasra Nos. 22/2, 22/3, 22/4 and 22/5 measuring 17-7 bighas, as the said area formed part of Khasra Nos. 23 and 27, which was owned and possessed by Sh. Durga Singh. Pursuant to the decree dated 04.05.1968, Mutation No. 19 was attested on 28.08.1970. No appeal was preferred against the aforesaid decree.

2(vi) The State of Himachal Pradesh instituted Civil Suit No. 10 of 1971 against Sh. Durga Singh, seeking declaration that the judgment and decree dated 04.05.1968 passed in Civil Suit No. 21/1 of 1965 was illegal, null and void, having been obtained by misrepresentation, fraud



and mistake, and, therefore, not binding upon the State. A decree for possession of land measuring 17-7 bighas comprised in Khasra Nos. 22/2, 22/3, 22/4 and 22/5 was also sought. The Civil Suit was decreed on 25.09.1978. The judgment & decree dated 04.05.1968 and consequent Mutation No. 19 attested on 28.08.1970 were declared illegal, and null & void. *Inter alia*, a decree for possession was also granted in favour of the State in respect of the land comprised in Khasra Nos. 22/2, 22/3, 22/4, 22/5 and 22/1 measuring 39-14 bighas. It was held that, on the basis of the compromise decree dated 04.05.1968, Sh. Durga Singh had obtained *patta* in respect of a larger area, i.e. 39-14 bighas instead of 17-7 bighas.

2(vii) Sh. Durga Singh preferred RFA No. 775 of 1978. The appeal was allowed on 28.11.1989, the judgment & decree dated 25.09.1978 were modified. The State was held entitled to possession of only 17-7 bighas, there being no evidence that Sh. Durga Singh had obtained possession of any excess area. He was declared owner in possession of the remaining land measuring 22-7 bighas. Thereafter, the State of Himachal Pradesh instituted instant Execution Petition No. 4 of 1991 for enforcement of the aforesaid judgment and decree, as modified, seeking possession of 17-7 bighas of land comprised in Khasra Nos. 22/2, 22/3, 22/4 and 22/5. During pendency of the execution petition, Sh. Durga Singh instituted Civil Suit No. 329/1 of 95/1991 seeking declaration of ownership by way of adverse



possession in respect of the decretal land, i.e. 17-7 bighas comprised in Khasra Nos. 22/2, 22/3, 22/4 and 22/5. The Civil Suit was dismissed on 30.06.1999 by the learned Senior Sub Judge, Shimla. Civil Appeal bearing No. 65-S/13 of 2004-99, was also dismissed on 30.11.2004 by the learned Additional District Judge (Fast Track Court), Shimla. Thereafter, Regular Second Appeal No. 234 of 2005 was dismissed by this Court on 26.09.2008. Pertinently, during the pendency of the aforesaid Civil Suit and the subsequent appeals, instant execution petition had been adjourned *sine die* awaiting the outcome of the said proceedings. Upon dismissal of Regular Second Appeal No. 234 of 2005 on 26.09.2008, the execution petition was revived.

2(viii) During the pendency of the execution proceedings, the judgment debtor submitted representations to the State of Himachal Pradesh through the Secretary (Revenue)/Additional Secretary (Revenue), on the basis of the settlement carried out in the area during the years 2005–2009, offering land from his ownership in exchange for the decretal land so as to protect the residential houses existing thereon. Upon repeated representations made by the judgment debtor, the State Government agreed to an amicable settlement of the dispute. On 27.12.2017, the Additional Chief Secretary (Revenue) to the Government of Himachal Pradesh addressed a communication to the Deputy Commissioner, Shimla (Annexure R-1), conveying the decision taken by the State Government in the matter as follows: -



"I am directed to refer to your letter No.SML. LB (Misc)/2011-1093 dated 18-08-2011 and representations preferred by Sh. Devender Singh Rathore S/o Late Sh. Durga Singh Rathore, (Freedom Fighter) R/o Village Lindidhar, P.O Dhalli, Shimla-171002 on the subject cited above and to say that after consideration of the matter in consultation with Forest Department the following decision has been taken by the Government in the matter: -

- 1. The applicant Sh. Devender Singh Rathore etc. (legal heirs) S/o Late Sh. Durga Singh Rathore, (Freedom Fighter) R/o Village Lindidhar, P.O Dhalli, Shimla will surrender 2-73-89 hectare area of land to the Government from their land bearing Khasra No. 163 (carved out of old Khasra prob number 27) in lieu of land bearing Khasra Nos. 158 (1-59-37 hectare) 160 (0-27-75 hectare), 151 (0-56-65 hecets), 151/1 (0-18-96 hecets), 162 (0-04-08 hecets), 159 (0-04-84 hecets.) and 161 (0-02-24 hecets), total kita-7, area measuring 2-73-89 hecets. (Approximately 36-08 bighas,) carved out of Khasra No. 51/22 (disputed land).*
- 2. The Deputy Commissioner, Shimla will get the Demarcation of above land done and Tatima prepared of land surrendered to the State Government, on spot, in the presence of representatives of Forest Department as well as the applicants at the earliest.*
- 3. The Deputy Commissioner, Shimla after effecting the proposed surrender and mutation thereafter done will file an affidavit in the Hon'ble High Court apprising the Hon'ble Court that the matter has been resolved between the parties and the execution petition may be allowed to be withdrawn accordingly.*

You are, therefore, requested to take necessary action in the matter immediately and compliance report may be intimated to this Department accordingly."

In terms of the above decision, the State of Himachal Pradesh conveyed its decision that the judgment debtor would transfer the land to be surrendered by him (mentioned in the



above extracted letter), carved out from old Khasra No. 27, in lieu of the land (mentioned in the above extracted letter), carved out from old Khasra No. 51/2022 (the disputed land); This was to be implemented on the spot by the Deputy Commissioner by getting the demarcation of the land in question carried out and the *tatima* prepared in respect of the land surrendered by the judgment debtor in favour of the State Government; In the process, representatives of the Forest Department were also to be associated. After effecting the surrender as proposed in the decision, the mutation was to be sanctioned and attested; These documents were to be placed on record of the writ petition along with an affidavit to the effect that the matter had been resolved between the parties and that the execution petition be allowed to be withdrawn accordingly.

2(ix) The afore said decision was taken in consultation with the Forest Department. This decision of the State Government was placed before the Court by the judgment debtor in OMP No. 40/2018 with a prayer to keep the execution proceedings in abeyance till the implementation of the aforesaid decision. Consequently, an order was passed in this execution petition on 27.04.2018 directing the State to place on record the material regarding the implementation of the amicable settlement arrived at between the parties in terms of the Government decision conveyed in office letter dated 27.12.2017. Pursuant thereto, the Deputy Commissioner, Shimla, furnished his



affidavit dated 22.05.2018, stating therein that: (i) the matter was sent to the Tehsildar, Shimla (Rural), on 17.03.2018 for compliance with the directions issued by the ACS (Revenue) to the Government of Himachal Pradesh under office letter dated 27.12.2017; and (ii) the Tehsildar, Shimla (Rural), on 09.04.2018 reported that the demarcation of the suit land had been carried out on the spot in the presence of the judgment debtor and the representatives of the Forest Department. Statements of the representatives of the Forest Department were also recorded. Consequently, Mutation No. 129 was attested on 28.02.2018, mutating the corresponding land parcels in favour of the judgment debtor as also in favour of the State of Himachal Pradesh. The demarcation report, *tatima*, latest *jamabandi*, mutation, and all other relevant documents, including the statements of the parties and the officials of the Forest Department, were also placed on record along with the affidavit of the Deputy Commissioner, Shimla.

2(x) Pursuant to the order dated 27.04.2018 passed in this execution petition, apart from the aforesaid affidavit filed by the Deputy Commissioner, Shimla, the Additional Chief Secretary (Forests) also filed his personal affidavit on 22.06.2018, conveying that, in furtherance of the decision taken by the State of Himachal Pradesh on 27.12.2017, a meeting was convened under the Chairmanship of the Additional Chief Secretary (Forests) on 11.06.2018 on the subject matter, wherein officials of the Revenue and the concerned Forest Department were



also associated. The following issues were statedly deliberated in the meeting: -

“(a) That the exchange of Forest land with private land is not allowed as per provisions of Forest (Conservation) Act, 1980. Deputy Secretary (Revenue) informed that this is a very old case and the Judgment Debtors -Applicants are in possession of disputed land since 1957. In-fact a Patta of 74-12 bighas was granted to the Applicants in Mohal DPF Mashobara. But the debtors-applicants possessed excess land to the extent measuring 2-73-89 hectare within same Mohal DPF Mashobara. While examining the Revenue record, it has been found that the applicants are in possession of disputed land since sixties and now willingly surrendered the excess land.

(b) That the Revenue Department is the custodian of land records and is fully authorized to make corrections in the Revenue entries and such decisions should be acceptable to the Forest Department. There could be cases where wrong revenue entries have been made and revenue department corrects the entries at a later date. The Forest Department will also correct the record accordingly as the two records cannot be different. In this case if Khasra numbers were wrongly mentioned in the Patta given to the allottee and now Revenue Department corrects the Khasra numbers as a result of which the Forest Khasra numbers also change, Forest Department can accept. However, exchange of land cannot be allowed without clearance under FCA, 1980. In the present case the allottee surrenders excess land to the extent area measuring 2-73-89 hectare in Khasra no. 163/3 (approx. 36-08 bighas) in favour of the Forest Department and mutation of correction/surrender bearing No. 129 dated 28-02-2018 has been attested in Mohal DPF Mashobara, Tehsil Shimla Gramin in favour of State of H.P. in possession of Forest Department by the legal heirs of Late Sh. Durga Singh Rathore.

(c) That the Revenue Department has made corrections in the record of rights to resolve the dispute of more than 60 years old



arised much before the enactment of Forest (Conservation) Act, 1980.”

The ACS (Forests), in his affidavit dated 21.06.2018, conveyed that after deliberations, the decision was taken by the Forest Department to get the matter of the correction of entries clarified by the Revenue Department. Accordingly, the Revenue Department was requested to clarify, with respect to the decision taken vide office letter dated 27.12.2017 as to whether it was a case of correction in the revenue record or an exchange of forest land with private land.

Further position was clarified in the affidavit filed by the Additional Chief Secretary (Forests) on 09.09.2019. In the said affidavit dated 06.09.2019, the Additional Chief Secretary (Forests) apprised that information had been received from the Additional Chief Secretary (Revenue) on 10.07.2018 to the effect that there was no exchange of private land with Government land, rather, the excess land owned and possessed by the judgment debtor out of DPF Mashobra had been resumed by the State Government, as claimed by the Forest Department, within the same Muhal DPF Mashobra. It was further stated that, in view of the decision of the State Government, necessary corrections in the revenue records had also been effected by the field revenue agency after proper demarcation, and mutations in respect of the land parcels had also been attested in the presence of the judgment debtor as well as the officials of the Forest Department on



28.02.2018 and 24.03.2018, respectively. The relevant portion of the affidavit reads as under: -

"....The Revenue Department in response to the letter issued by the Additional Chief Secretary (Forests) dated 20.6.2018 has informed vide Additional Chief Secretary (Revenue) to the Govt. of H.P. letter No.Rev-B-E(5) 2/2017 dated 10.07.2018 (Copy enclosed as Annexure-R-1) as under:-

"Hence there is no exchange of Private land with Government land affected in the instant case, rather the excess land owned and possessed by the debtors-applicants out of DPF Mashobbra has been resumed by the State Government as the claim of the Forest Department within the same Muhal DPF Mashobbra.

In view of the above decision of the Government, necessary correction of revenue records have been effected by the field Revenue agency after proper demarcation and mutation attested of the land in the presence of the applicants as well as Forest Department officials on 28.02.2018 and 24.03.2018 respectively. The record of such proceedings have already been produced by the District Collector, Shimla through an affidavit before this Hon'ble High Court.

You are, therefore, requested to apprise the Hon'ble High Court of the factual position in the matter on behalf of Forest Department accordingly."

This affidavit, however, narrated subsequent facts that despite the clarification of the Revenue Department, as received by the Forest Department and implementation of State decision dated 27.12.2017, the office of the learned Additional Advocate General, Himachal Pradesh, raised certain issues regarding the aforesaid clarification of the Revenue Department. Accordingly, the matter was



again taken up by the ACS (Forests) with the Chief Secretary to the Government of Himachal Pradesh. A meeting was convened on 20.09.2018, which was attended by the ACS (Revenue), ACS (Forests), the learned Additional Advocate General and other field functionaries, wherein it was unanimously decided as under: -

- “a. The Revenue Department shall issue instructions to the Deputy Commissioner, Shimla to withdraw affidavit dated 22.05.2018 which has been filed in the Hon'ble High Court of H.P. in the instant matter.*
- b. The Forest Department shall impart clear instructions to the Ld. Advocate General, Himachal Pradesh that the judgment and decree subject matter of Execution Petition No.4/1991 is not fully satisfied and the Execution Petition be pursued in the Hon'ble High Court as per the decision of RFA No. 775/1978 dated 28.11.1989.”*

The fresh affidavit dated 06.09.2019 filed by the ACS (Forests) further stated that 'in view of the unanimous decision taken on 20.09.2018, it had become imperative to pursue the execution petition for enforcement of the judgment and decree dated 25.09.1978, as modified on 28.11.1989. The same had not been implemented in letter and spirit. The affidavit prayed for nullifying the mutation of Patta qua 17-7 bighas of land executed in favour of the judgment-debtor, for dispossessing the judgment-debtor from the subject land measuring 17-7 bighas and handing over possession thereof to the decree-holder. A further prayer was also made for declaring the mutation of the Patta entered in favour of the judgment-debtor as inoperative'.



In view of the unanimous decision taken by the Committee on 20.09.2018, extracted hereinabove, OMP No. 402 of 2021 was filed by the Deputy Commissioner, Shimla, seeking withdrawal of his affidavit dated 22.05.2018 on the following grounds: -

"7. That since vide mutation No 129 attested on 28-02-2018 which was attested in compliance to the directions issued by the Addl. Chief Secretary (Revenue) to the Govt. of H.P vide his office letter No. Rev. B.E (5)2/2017 dated 27-12-2017 (Annexure A-1), the forest land was exchanged with the land of the respondents and the affidavit in this regard was filed in the Hon'ble High Court on 22-05-2018. The said exchange as reported by the Divisional Forest Officer Shimla vide his letter No 1720 dated 29-06-2021 is not permissible keeping in view the provisions of FCA 1980. (Annexure A-7). In compliance to the directions issued by the Principal Secretary (Revenue) to the Govt. of H.P. on 24-07-2021 qua the decision taken in the meeting held on 20-07-2018 by the worthy Chief Secretary to the Govt. of H.P. and the detailed submissions made by the Divisional Forest Officer Shimla vide his letter dated 29-6-2021 (A-7), affidavit qua the withdrawn of affidavit filed on 22-5-2018 by the Deputy Commissioner Shimla has been prepared which is annexed as Annexure A-8. The said affidavit may kindly be taken on record so that the orders dated 28-11-1989 passed by the Hon'ble High Court in RFA No 775 of 1978 could be implemented in the revenue records."

3. The above history of the litigation between the parties and the developments that took place during the period, lead to the conclusion that this execution petition, in fact, stood satisfied on 28.02.2018 with the attestation of Mutation No. 129 qua the corresponding lands, respectively, in favour of the judgment debtor



and the decree holder-State, after the surrender of the land by the judgment debtor consequent to the decision taken by the State of Himachal Pradesh, as conveyed in the office letter dated 27.12.2017.

At the cost of brevity, it again becomes imperative to narrate the bare minimum factual position. Under the office letter dated 27.12.2017, the decision taken by the Government of H.P. was conveyed by the ACS (Revenue) to the Government of H.P. In terms of the said decision, the land described therein was to be surrendered by the judgment debtor in lieu of the subject land claimed by the decree holder in the execution petition. The said decision was taken to amicably resolve the *lis* between the parties, which had continued for decades together. The decision was arrived at after deliberation & consultations with Forest Department. In terms of the said decision of the State Government, the ACS (Revenue) to the Government of H.P. directed the Deputy Commissioner, Shimla, to take consequent action in the matter with a clear further direction that, after taking the requisite action, i.e., after effecting the proposed surrender of the land, the attestation of mutation, an affidavit was to be filed before this Court in the present execution petition apprising that the matter had been resolved and that the execution petition be permitted to be withdrawn. The said decision to resolve the dispute between the parties was implemented in accordance with the steps delineated therein. All the procedural steps, as directed, were complied with by the field Revenue



Agency under the directions of the Deputy Commissioner, Shimla, who had been made responsible under the aforesaid office letter to execute the said decision.

Accordingly, the judgment debtor surrendered the land mentioned in the office letter dated 27.12.2017 in lieu of the subject land. Mutation was accordingly attested on 28.02.2018, respectively, in favour of the judgment debtor as well as the State of H.P. This was preceded by the demarcation of the land carried out by the competent authority in the presence not only of the judgment debtor but also of the representatives of the Forest Department. It is not in dispute that the decision, as conveyed in the office letter dated 27.12.2017, has been implemented, and ever since then, the parties have been in respective possession of separate parcels of land as owners thereof. The judgment debtor has surrendered possession and ownership of the land comprised in old Khasra No. 27 (as detailed in the aforesaid letter) in favour of the decree holder-State. The decree holder has been enjoying the possession and ownership of this land ever since 2018 till date. There appears to be no reason whatsoever for allowing the decree holder to withdraw the affidavit of the Deputy Commissioner, Shimla dated 22.05.2018. The only reason given for the withdrawal of the affidavit is the so-called unanimous decision taken in a meeting by the ACS (Revenue), ACS (Forests), learned Additional Advocate General, and the respective field functionaries. No



justification has been put forth as to what prompted the Committee to take a U-turn from the decision of the State Government as conveyed in the office letter dated 27.12.2017, particularly when the said decision had already been implemented in letter and spirit and the affidavit regarding its implementation had already been filed in the execution petition.

It appears that an attempt has been made to raise certain fresh concerns relating to the forest issue. However, the case records, as discussed above, reflect that all those issues had been examined, considered, and deliberated upon by the Forest Department, culminating in the decision of the State Government as conveyed in the office letter dated 27.12.2017, arrived at for resolving the dispute between the parties in the manner indicated therein. Even thereafter, the Forest Department again deliberated upon the matter in consultation with the Revenue Department and reaffirmed the decision taken on 27.12.2017. The decision was duly acted upon and implemented.

4. On going through the entire factual history of the case and the documents on record, it has to be held that this execution petition stood satisfied upon the attestation of Mutation No. 129 dated 28.02.2018, which was placed on record by the learned Deputy Commissioner, Shimla along with his affidavit dated 22.05.2018. The OMP No. 402 of 2021, seeking permission to withdraw the affidavit



dated 22.05.2018 filed by the Deputy Commissioner, Shimla, cannot be accepted at this stage. The application is, accordingly, dismissed. Consequently, the execution petition is disposed of as fully satisfied. Pending miscellaneous applications, if any, shall also stand disposed of.

Jyotsna Rewal Dua
Judge

18th July, 2026 (rohit)