



IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA

CWP No. 2372/2009
Decided on: 20.06.2026

Bhagwan Dass & Ors.

.....Petitioners

Versus

Financial Commissioner (Appeals) & Ors.

....Respondents

.....
Coram

Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner:

Mr. Mohinder Verma, Advocate.

For the respondents:

**Mr. Y.P.S Dhaulta, Additional
Advocate General, for respondents
No.1 & 2.**

**Mr. R.K. Bawa, Sr. Advocate with Mr.
Vijay Mokta, Advocate, for
respondent No.3.**

**Respondents No.4, 5(i) to 5(iii) &
respondents No.6 to 9 are ex parte.**

Jyotsna Rewal Dua, J.

Petitioners are successors-in-interest of late Shri Daulat Ram. They are aggrieved by the order dated 28.01.2009 passed by the Financial Commissioner (Appeals), H.P., setting aside the orders dated 17.12.1990 passed by the Collector, Solan Sub-Division, and dated 05.07.1993 passed by the Commissioner, Shimla Division. The Financial Commissioner, vide impugned order dated 28.01.2009,

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



accepted the revision petition preferred by the private respondents. Consequently, the petition filed by the petitioners under Section 4 of the Himachal Pradesh Restitution of Mortgaged Lands Act, 1976 (the Act in short) was dismissed.

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

3. The Case.

3(i) Smt. Kapooru & Smt. Reshmu were owners of 60-17 bighas of land situated in Village Maneshi, Tehsil Kasauli, District Solan. Under Mutation No. 116, attested on 13.06.1947, they mortgaged this entire land with possession in favour of Sh. Lachhman Dass. Sh. Lachman Dass died and was succeeded by his son, Sh. Daulat Ram, predecessor-in-interest of the present petitioners.

3(ii) Under Mutation No. 196, attested on 03.04.1961, Sh. Daulat Ram mortgaged the above-described land with possession in favour of the predecessor-in-interest of the present respondents.

3(iii) Smt. Kapooru & Smt. Reshmu, the original owners of the land in question, sold 1/18th share in the aforesaid land measuring 60-17 bighas in favour of Sh. Daulat Ram. Mutation No. 210 was attested in this regard on 18.05.1967.

3(iv) On 18.08.1986, the petitioners moved an application under Section 4 of the Act, against the present respondents/their predecessor praying that mortgage of the entire land measuring 60-17



bighas in favour of the respondents be ordered to be extinguished and possession of the land be delivered to them. The application was allowed by the Collector Sub Division Solan on 17.12.1990. While allowing the application, the Sub Divisional Collector, *inter alia*, held that petitioners' predecessor-in-interest, Sh. Daulat Ram, was the mortgagee over the land in question and, without the consent of the mortgagors/original owners, could not have sold his rights in the mortgaged land in favour of the respondents (or their predecessor-in-interest) and extinguish his relationship with the mortgagors; The petitioners' predecessor-in-interest, being the mortgagee, had himself created a sub-mortgage by inducting the respondents as sub-mortgagees over the land, therefore, he had the right to redeem the land and get back its possession. Consequently, the successors of Sh. Daulat Ram, i.e. the petitioners, have the right to redeem and take possession of the land. The Collector, Solan Sub-Division, also drew adverse inference from the fact that the respondents had not reported to the concerned Revenue Officer under Section 35 of the Himachal Pradesh Land Revenue Act their purchase of the mortgagee rights from Sh. Daulat Ram.

3(v) Respondents' appeal against the above order was dismissed by the Commissioner, Shimla Division, on 05.07.1993 by a very short order with the assigned reason that the Collector, Solan Sub-Division had examined the matter on merits and had recorded clear



findings on all the issues. In view of this, the Commissioner did not deem it proper to examine the matter again. The respondents carried the matter further by filing a revision petition before the Financial Commissioner (Appeals), H.P. The said petition was decided on 28.01.2009. The relevant portion of the order is as under: -

“Having heard the arguments and after consideration of the record, I find the learned Collector has arrived at the conclusion that the jamabhandi for the year 1984-85 reflects the true picture. According to the Collector, the present Respondents have been shown as mortgagees of the land in dispute and the present Petitioners as mortgagors. He has further observed that Shri Daulat Ram, predecessor of the present Respondents had undisputedly purchased the right, title and interest of Smt. Kapooru and Smt Reshmu, original owners for Rs. 1800/- and mutation no. 210 had been sanctioned on 18.05.1967 in this regard. The learned Collector has, on basis of these findings held the Respondents as entitled for resumption of the land. It is an undisputed fact that Shri Daulat Ram had transferred his rights of mortgagee in favour of the predecessors of the present Petitioners. It is irrelevant whether he sold his rights of mortgagee or he created a sub-mortgage. The fact remains that he did not, acquire ownership rights over the land on account of this transaction. It is also a fact that Smt Kapooru and Reshmu later sold 1/18 part of the land in dispute to Shri Daulat Ram and mutation no. 210 dated 18.05.1967 was attested qua this transaction. Hence it is clear that Shri Daulat Ram acquired ownership of only 1/18 of the land in dispute. The learned Collector has, in my opinion failed to inquire into the correctness of the entries of the jamabandi for the year 1984-85 and his order is silent on how the present Respondents who are successors of Shri Daulat Ram came to be recorded as mortgagees of the entire land in dispute. Neither has it come on record that Shri Daulat Ram had purchased the entire land nor has the learned counsel for the Respondents so claimed in her arguments. It is apparent that the entries incorporated vide mutation



no. 210 were not correctly incorporated in the revenue record. As Shri Daulat Ram had purchased only 1/18 share on the land in dispute, his successors i.e. the present Respondents could not have been recorded as sole owners over this land Accordingly they had a right to redeem only 1/18 share in the land. So far as the issue of Shri Durga Ram being tenant over this land is concerned, his entry has been corrected vide a 'Fard Badar' which has not been assailed before any competent authority by him hence he cannot claim ownership rights over the land on this account at this stage.

For the reasons, discussed hereinabove it emerges that courts below have not correctly appreciated the evidence on record and therefore the orders dated 17.12.1990 passed by the Collector, Solan Sub-division and that passed by the Commissioner Shimla Division dated 05.07.1993 are not sustainable in the eyes of the law. Hence, these orders are set aside. The revision petition is accordingly accepted."

Though the Financial Commissioner accepted the revision petition filed by the respondents and set aside the orders passed by the Collector, Solan Sub-Division on 17.12.1990, and the order passed by the Commissioner, Shimla Division on 05.07.1993, but held that Sh. Daulat Ram had acquired ownership rights to 1/18th share of the land in dispute, therefore, the petitioners, being the successors of Sh. Daulat Ram, had the right to redeem 1/18th share in the land. Despite this observation, the restitution application moved by the petitioners was dismissed in its entirety and was not allowed even to the extent of 1/18th share in the land measuring 60-17 bighas.



4. Consideration

It is an admitted position on record that the original owners of the land, measuring 60-17 bighas, were Smt. Kapooru and Smt. Reshmu, who created a mortgage with possession of this land in favour of Sh. Lachhman Dass. Mutation No. 116 was duly attested on 13.06.1947 evidencing this fact. After the death of Sh. Lachhman Dass, his son, Sh. Daulat Ram, stepped into his shoes and became the mortgagee in possession. It is also a matter of record that Sh. Daulat Ram mortgaged the entire land in favour of the predecessor-in-interest of the respondents, and Mutation No. 196 was attested on 03.04.1961 in this regard. There is nothing on record to suggest that Sh. Daulat Ram, while creating the mortgage in favour of the predecessor-in-interest of the respondents, had obtained the consent of the original owners, namely Smt. Kapooru and Smt. Reshmu. Being a mortgagee himself, he could not have mortgaged the land in favour of the respondents' predecessor-in-interest without the consent of the original owners. Vide Mutation No. 210, attested on 18.05.1967, Sh. Daulat Ram acquired ownership rights over 1/18th share of the subject land measuring 60-17 bighas. Thus, Sh. Daulat Ram stepped into the shoes of the original owners, Smt. Kapooru and Smt. Reshmu, and became a mortgagor only to the extent of 1/18th share in the subject land. At this stage, it would be relevant to refer to Section 4 of the Himachal Pradesh Restitution of Mortgaged Lands Act, 1976, under which the



petitioners, being the successors of Sh. Daulat Ram, had moved the petition for restitution of the mortgaged land measuring 60-17 bighas: -

“4. Petition for restitution.- A mortgagor to whose land the provisions of this Act apply, may at any time present a petition to the Collector praying for restitution of the land mortgaged. The petition shall be duly verified in the manner prescribed for such petitions.”

Section 4 of the Act enables a mortgagor to redeem the mortgaged land. In relation to the respondents, the petitioners were mortgagors only to the extent of 1/18th share of the land measuring 60-17 bighas, as they had acquired ownership rights thereof on 18.05.1967. Qua the remaining land, their status qua the original owners was that of mortgagees. Significantly, while seeking restitution of the mortgaged land, the petitioners did not implead the original owners, namely Smt. Kapooru and Smt. Reshmu. The original owners are not parties to the present litigation as well. The right, if any, to seek restitution of the remaining mortgaged land vests in the original mortgagors, namely Smt. Kapooru and Smt. Reshmu-the owners of remaining land. Petitioner (their predecessors), who had illegally mortgaged their mortgagees' right in favor of respondents (their predecessors) cannot be permitted to derive any premium out of this illegal act by claiming the possession of the land. To this extent, the Financial Commissioner (Appeals) has rightly concluded that the petitioners have the right to redeem only 1/18th share in the land.



However, the impugned order falls short as consequence thereof has not been directed in the order. Accordingly, this writ petition is allowed to the extent that the petitioners are permitted to redeem 1/18th share in the subject land measuring 60-17 bighas, in accordance with law. The petitioners shall also be at liberty to seek partition of the subject land measuring 60-17 bighas to the extent of their 1/18th share therein.

With the above modification to the impugned order dated 28.01.2009 passed by the Financial Commissioner (Appeals), H.P., the writ petition stands disposed of. Pending application(s), if any, also stand disposed of accordingly.

Jyotsna Rewal Dua
Judge

20th June, 2026 (rohit)