

Onkar Nath vs State of HP & Ors.

CWP No.2501 of 2025

21.02.2025 Present: Mr. Saurabh Ahluwalia and Mr. Digvijay Singh Thakur, Advocate, for the petitioner.

Mr. YPS Dhaulta, Additional Advocate General, for respondents.

CWP No.2501 of 2025

Heard.

Mr. YPS Dhaulta, Learned Additional Advocate General, appears and waives service of notice on behalf of respondents No.1 to 4.

Reply, if any, be filed within four weeks.

Records be requisitioned.

CMP No.2504 of 2025

Heard.

Notice in aforesaid terms.

2. Instant application has been filed for interim directions for seeking stay of Impugned Orders dated 27.01.2025, passed in Revision Petition No.305 of 2023, by Financial Commissioner [Appeals] *[Annexure P-IV]*.

3. Learned Counsel for petitioner draws the attention of this Court to Para 7 of the Impugned

Orders dated 27.01.2025 [Annexure P-IV], passed by Financial Commissioner, *which read as under :-*

“7. I have considered the argument put forth on behalf of the parties and have gone through the record of the Courts below. From the perusal of the trial court’s file, *it is clear that the proceedings under Section 163 of the Act were initiated against the present petitioner on report of the Field Kanungo concerned, by the AC 2nd Grade.* The zimni orders with effect from date 10.02.2020 to 30.09.2022 shows that this matter was being heard by the AC 2nd Grade. On 30.09.2022, when the petitioner was present, the matter was adjourned to 15.10.2022. By 15.10.2022, the AC 2nd Grade, was transferred and thereafter, the file was transferred to the AC 1st Grade. The AC 1st Grade. **The AC 1st Grade, took up the matter first time on 16.01.2023, when the present petitioner was not present before the Trial Court and the matter was adjourned for 07.02.2023.** Though on 07.02.2023, the AC 1st Grade ordered ejectment of the petitioner, **in his absence**, but, from perusal of the zimni order dated 9.11.2021 onwards, it is clear that the matter was pending for want of report from the Field Kanungo regarding confirmation of statement made by the petitioner before the trial Court that he has vacated the encroachment himself. Thus, it is clear that the present petitioner had already admitted the

factum of encroachment made by him and had stated before the trial court that he has already vacated the same. The report was received from the Kanungo concerned vide No.494/FKGO Palampur, dated 3.10.2022, wherein it has been clearly mentioned that the petitioner has not removed the encroachment. **Thus, it cannot be said that the AC 1st Grade has passed the order without providing opportunity of being heard to the petitioner.** Moreover, it is clear from the record that the petitioner has reduced the width of a public path by encroaching upon the Government land, which is not acceptable in the eyes of law. *Therefore, the AC 1st Grade has rightly passed the ejectment order dated 07.02.2023, against the petitioner.* The Ld. Collector has also provided proper opportunity of being heard to the petitioner while adjudicating upon and rejecting the appeal of the present petitioner, vide impugned order dated 25.08.2023, passed in Case No.25/2023.”

4. In the background of aforesaid order, Learned Counsel for petitioner, as referred to Para 5(c) of the instant petition, *which read as under:-*

“5(c) The Assistant Collector Grade-I in a highly arbitrary negligent manner passed an ex parte order dated 07.02.203 against the petitioner without following the due procedure of

law and principle of natural justice passed in an arbitrary manner a exparte order without entering into the merits of the case, that the proceedings were registered as Case No.1 of 2023 and it was listed for the first time on 16.01.2023 after the orders of SDO (Civil) on 04.01.2023 and **was finally adjudicated by passing an exparte order on 07.02.2023 under on month without issuing notice and adhering to the due process of law and Principles of Natural Justice.”**

5. Learned Counsel for petitioner further contends that akin to the averments to Para 5(c) of the instant petition, the petitioner had raised similar contentions before Sub-Divisional Collector, Palampur, that Assistant Collector 1st Grade, Palampur, had neither not issued any notice nor afforded an opportunity of hearing before ordering ex-parte ejectment of the petitioner, which is contended to be perverse, resulting in depriving the petitioner of his right to present his case and to defend himself in proceedings under Section 163 of Himachal Pradesh Land Revenue Act.

6. Taking into account the entirety of facts and circumstances and contentions raised by Learned Counsel for petitioner, this Court, at this stage, is of

the prima facie view, that petitioner has made out a case for grant of interim protection.

Accordingly, in the interim, this Court directs that no further action be taken by Respondents-State Authorities in pursuance to orders date 27.01.2025 [*Annexure P-IV*] and respondents are directed to maintain status quo, as on day, till the next date of hearing.

List the matter before appropriate Bench on **04.04.2025**.

February 21, 2025
(*Chiranjeev*)

(Ranjan Sharma)
Vacation Judge