

**Jagan Nath (since deceased) through his legal
representatives vs. Sanatan Dharma Sabha
CMP No. 8700 of 2025 in RSA No. 378 of 2010**

09.01.2026 **Present:** Mr. Bhupender Gupta, Sr. Advocate, with
Mr. Janesh Gupta, Advocate, for the appellant.

Mr. Ajay Sood, Sr. Advocate, with Mr. Rohit,
Advocate, for the respondent.

CMP No. 8700 of 2025

This order shall dispose off an application filed by the respondent/applicant seeking payment of use and occupation charges with respect to the suit property at the rate of Rs. 50,000/- per month from the date of decision of the trial Court i.e. 30.06.2008 or from the date of the decision of the First Appellate Court i.e. 25.08.2010 with further prayer that the interim stay order dated 25.08.2010 be modified subject to the payment of use and occupation charges and the mesne profits.

2. The non-applicant/appellant has resisted the application by filing a detailed reply, whereby it has been averred that the present application is not maintainable in view of the orders dated 19.03.2025, passed in CMP No.22733 of 2024. It has been averred that in CMP No. 22733 of 2024, a request was made to the Court to hear the appeal at some early date. The present applicant had also prayed for the payment of use and occupation charges at the rate of Rs. 50,000/- per month in that application. It has been stated that this Court allowed the prayer of the applicant, whereby the appeal was directed to be heard at an early date and the

case was posted for final arguments in the 2nd week of August, 2024. No order was passed by the Court with respect to the fixing of use and occupation charges, therefore, the present application is not competent or not maintainable, therefore, deserves to be dismissed.

3. The applicant had earlier filed CMP No. 22733 of 2024 by making a prayer for payment of use and occupation charges at the rate of Rs.50,000/- per month and further with a prayer that the present Regular Second Appeal be ordered to be heard at an early date. Along with the application bearing CMP No. 22733 of 2024, the applicant had also annexed Annexures RX, RY and RZ which comprised of parking receipts and photographs. This Court on 19.03.2025, allowed the prayer of the applicant for early hearing of the appeal.

4. From the perusal of order sheets, it would be clear that the Proxy counsel had appeared on 19.03.2025 and the learned original counsels did not put in appearance while adjudicating the application bearing CMP No. 22733 of 2024. It has been averred by the learned counsel for the non-applicant that in view of the order passed by this Court on 19.03.2025, the subsequent application bearing CMP No.8700 of 2025 is not maintainable since no order was passed for the payment of use and occupation charges. On the other hand, the learned Senior counsel appearing for the applicant submits that on 19.03.2025, the Proxy counsels appeared for

both the sides and the Court could not be assisted properly, therefore, the prayer for use and occupation charges could not be adjudicated upon by this Court.

5. I have heard Mr. Bhupender Gupta, learned Senior counsel, assisted by Mr. Janesh Gupta, Advocate for the non-applicant and Mr. Ajay Kumar, learned Senior counsel, assisted by Mr Rohit, Advocate, for the applicant/respondent.

6. Learned Senior Counsel for the applicant submits that the litigation is pending between the parties for the last more than 33 years. The suit in question was filed by the applicant way back on 02.08.1993 and despite passing of the decree for more than 33 years, the non-applicant is unauthorisedly occupying the suit property, which is owned by the plaintiff/applicant.

7. The learned Senior counsel for the applicant submits that the learned Lower Appellate Court has passed the decree of vacant possession of the suit property by way of demolition of the super structure raised on it at the expenses of defendant in view of the order passed by the then Additional District Judge, Kullu dated 30.09.1994, keeping in view the fact that the suit property consists of about 5 bighas and 18 biswas and the non-applicant is enjoying the same and it is in unauthorized possession of the same for several years. Learned Senior counsel for the applicant further submits that the learned District Judge had passed the judgment way back on 31.05.2010 and despite passing of

more than 15 years, he was unable to execute the said judgment and decree in view of the interim order as passed by this Court. On 25.08.2010, this Court had issued notices to the respondent in CMP No. 770 of 2010, whereby the parties were directed to maintain status quo with respect to the nature of the suit land. The present appeal was admitted by this Court on 09.11.2010 and the ad interim order dated 25.08.2010 was made absolute. Though, it was ordered that the matter be listed for final hearing in the 1st week of March, 2011 but subsequently for one or the other reason, the matter has not been finally argued. The learned Senior counsel appearing for the non applicant submits that appeal itself can be finally heard so that the appeal is adjudicated.

8. I have heard learned counsel for the parties, in the present case the parties are litigating for the last more than 33 years. The plaintiff/applicant had filed a suit for declaration to the effect that Khasra No. 1354, Khata No.290 and Khatoni No. 426, area measuring 5 bighas and 18 situated in Phati Shamshi, Kothi Khokhan, Tehsil and District Kullu entered into the jamabandi for the year 1989-90 is owned and possessed by Sanatan Dharam Sabha Kullu but the entries with regard to defendant No. 2 are incorrect and wrong. Consequentially, the plaintiff sought relief of Permanent Prohibitory Injunction to the effect that the defendant be permanently restrained from interfering in any manner in the suit land and further mandatory injunction to the effect

that any structure raised by the defendant over the suit property be removed by way of demolition at the costs of defendant and finally in alternative, the possession of the suit property was prayed by the plaintiff.

9. It was prayed in the plaint that the plaintiff is a charitable trust and has been registered under the Societies Registration Act, 1860. One Sh. Nanak Chand, son of Sh. Nahta, resident of Bhuntar, Tehsil and District Kullu, was previously owner-in-possession of Khasra No. 948, which Khasra No. was changed to Khasra No. 1354, the present Khasra numbers of the suit land, during the settlement effected from 1946 to 1951. This Nanda, known as Nanda Shah as well, gifted the property to Sanatan Dharam Sabha Kullu, i.e the present plaintiff, orally vide mutation No.26 dated 19.01.1914 and created a trust for the purposes mentioned in the mutation. The conditions for the purpose of creation of trust were that the suit land shall not be alienated in any manner to anyone, but its usufructs and income would be utilized for running the girls school and for the purposes of construction of Dharamsala for the travellers to stay in that without any payment. It was further laid down that shops can be constructed and the income derived from the rent of the shops shall be utilized for the maintenance of Dharamsala and if the income exceeds the maintenance costs and expenditure, shall be utilized for the girls school by the plaintiff.

10. It has been averred in the suit that defendant No.1 Jai Ram was appointed as Sub Manager by the plaintiff Sabha to manage the suit property and defendant No.2 Jagan Nath, son of defendant No.1 connived with the revenue officials and had made fictitious revenue entries showing defendant No.2 as tenant at will. The plaintiff Sabha and its members were under the bonfide belief that defendant No.1 is managing the suit land on behalf of the plaintiff sabha and,as such ,he was discharging his duties in the interest of the plaintiff Sabha but the defendants No. 1 and 2 were acting dishonestly with ulterior motive to grab the suit land i.e trust property malafidely for their own benefit without the knowledge and consent of the plaintiff. Therefore, the suit for declaration, permanent prohibitory injunction, manadatory injunction and in alternative, suit for possession was filed by the plaintiff.

11. The suit was contested by the defendants-appellants by filing written statement, by raising preliminry objections with regard to the limitation, maintainability, peculiar jurisdiction etc. On merits, it was stated that there was an agreement of sale in favour of the defendant with Sanatan Dharam Sabha, Kullu, whereby the Sabha vide its agreement dated 14.05.59 agreed to sell off the land measuring 5 bighas 18 biswas situated in Phati Shamshi, Kothi Khokhan, Tehsil Kullu, District Kullu comprised in Khasra No. 1354, khata/Khatuni No. 255/717 as incorporated

in jamabadi of year 1951-52 to defendant at the rate of Rs.1500/- per bigha and had also handed over the possession. It was averred in the written statement that the defendant has raised number of constructions over the suit land and the value of these constructions exceeded more than 4 lacs. Further, it was prayed that the defendant is in possession for more than 30 years in a peaceful, open and hostile manner.

12. Learned Civil Judge(Sr. Division), Kullu vide its judgment and decree dated 30.06.2008, dismissed the suit filed by the applicant and it was held that the plaintiff was owner of the suit land and it was in the permissive possession of the defendant/non-applicant, therefore, if the plaintiff was advised then the plaintiff is at liberty to take appropriate steps for taking possession of the suit property from the defendant in accordance with law.

13. Feeling dissatisfied, two appeals were preferred before the learned District Judge. The present applicant filed Civil Appeal No. 40 of 2008 and the non-applicant filed Civil Appeal No. 42 of 2008. The learned District Judge vide its judgment and decree dated 31.05.2010, accepted the appeal filed by the present applicant and the appeal filed by the non-applicant was ordered to be dismissed. The plaintiff was declared to be owner of the suit land and it was held that since defendant is in permissive possession and his plea of adverse possession has not been pressed, as such, the suit filed by the plaintiff for possession was decreed.

14. Further, it was held that the plaintiff is entitled to get the vacant possession of the suit land by way of demolition of super structure, raised at the expenses of the defendant.

15. From the perusal of the record and the factual matrix of the present case, it is evident that the parties are litigating for the last more than 33 years and the First Appellate Court has decreed the suit of the plaintiff/applicant for possession. The applicant could not execute the judgment and decree, as passed by the learned District Judge on account of the interim order passed by this Court on 25.08.2010 and affirmed on 09.11.2010.

16. Admittedly, the suit land consists of more than 5 bighas and 18 biswas. Apart from that, it is an admitted case of the defendant that he had raised number of constructions over the suit land and as per the decree as passed by the learned District Judge, the applicant has been held entitled to get vacant possession of the suit land by way of demolition of the super-structure raised on it.

17. The applicant in order to substantiate its case for the grant of use and occupation charges, has placed on record Annexure RX at page 92 and Annexure RY and RZ at page 93,94 (parking receipts issued under the name Jagan Nath Parking and photographs of the land showing Paid Parking Board) of the paper book by stating that the non-applicant is

earning an amount of more than Rs.1,50,000/- per month from the suit land. It has been averred that the non-applicant is also earning money by placing advertisement hordings on the suit land. It has further been averred in the application that though the parties were directed to maintain status quo vide its order dated 25.08.2010, but the non-applicant is using the suit land for commercial purposes as a parking lot. The suit property is situated at the heart of Tehsil Bhuntar, District Kullu, HP and it is big chunk of land consisting of 5 bighas 18 biswas. Admittedly, it is in possession of the non-applicant and despite passing of the decree passed by the learned District Judge, Kullu dated 31.05.2010 it is being utilized by the non-applicant for several years.

18. From the perusal of the parking receipts and the photographs, it also reveals that it is being utilized for the commercial purpose by the non-applicant and non-applicant is earning handsome money on account of the utilization of the suit land, which is apparent on the face of the record. Though, in the present case, applicant has sought sum of Rs.1,50,000/- per month as use and occupation charges and mense profit from the non-applicant, but no specific evidence has been placed on record in order to demonstrate that out of the suit land non-applicant is earning the said specific amount, but the fact remains that non-applicant is in possession of the suit land and there is also a decree for demolition of the structure raised by the defendant over the

suit land. Therefore, in order to maintain balance and equity between the parties, this Court deems it fit to order the non-applicant to pay a sum of Rs.75,00/- (Rs. seven thousand & five hundred) per month regularly as use and occupation charges being in possession of the suit land during the pendency of the appeal. The non-applicant is directed to pay the amount of Rs.75,00/- (Rs. seven thousand & five hundred) per month from the date of filing of the present application. This is being so ordered because the appeal is pending for the last more than 15 years, however, the applications were filed only after considerable period. The non-applicant is directed to deposit the entire amount of use and occupation charges till date within a period of three weeks from today, positively in the Registry of this Court.

19. In future, they are directed to deposit the said amount on or before the 7th Day of each month in the Registry of this Court, failing which adverse order shall follow.

20. Before parting, it is made clear that any observation made here-in-above shall not be taken as an expression of opinion on the merits of the main case and the same shall be adjudicated upon uninfluenced by any observation made here-in-above, which are only for the purpose of the instant application.

The Application stands disposed of.

RSA No. 378 of 2010

List the appeal for final arguments in the 1st Week
of April, 2026.

(Romesh Verma)
Judge

January 09, 2026
(veena).