

Gopinder Singh

Vs

The Forest Department of Himachal Pradesh and others

Civil Appeal No.3006 of 1981

17.8.1990

H.P. Nautor Land Rules (1968), R.7(a) - Grant of nautor land - Persons eligible for - person having two bighas of land but otherwise earning more than Rs.2000/- per annum - Not eligible for grant of nautor land.

Waste land - Grant of - Eligibility for - Person having two bighas of land but otherwise earning more than Rs.2000/- per annum - Not eligible.

There is inherent evidence in the Clause (a) of R.7 itself to show that the two parts cannot be read disjunctively. A person who has got less than 10 bighas of land but has an income of more than Rs.2,000/- from the said land is not eligible for allotment of nautor land under Clause (a). It cannot be said therefore that a person having an income of more than Rs.2,000/- per annum being eligible under the first part, the second part of C1.(a) of R.7 is not attracted. That would produce absurd result. A person having two bighas of land but otherwise earning Rs.20,000/- per annum would be eligible for allotment of nautor land in that case. The object of granting nautor land under the rules is to help poor and unprovided for residents of Himachal Pradesh. Considering the nature, scope and the clear intention of the framers of the Rules it is necessary to read the word "or" in between the first and the second part of clause (a) as "and". (Para 6)

JUDGEMENT

KULDIP SINGH,J

"Nautor land" under Rule 3 of the Himachal Pradesh Nautor Land Rules, 1968 (hereinafter called 'Rules') means the right to utilize with the sanction of the competent authority, waste land owned by the Government outside the towns, outside the reserved and demarcated protected forests, and outside such other areas as may be notified from time to time by the State Government.

2. Gopinder Singh applied for the grant of nautor land measuring 14 bighas 12 biswas situated in village Kanal for cultivation. The Revenue Assistant Chopal vide his order dated June 29, 1972 sanctioned nautor land measuring 11 bighas 1 biswas situated in village Kanal to him on payment of Rupees 552.50 as Nazardna. The Forest Department filed an appeal against the said order before the Deputy Commissioner Simla which was accepted and the order of the Revenue Assistant Chopal sanctioning nautor land in favour of Gopinder Singh was set aside.

3. Gopinder Singh filed further appeal to Divisional Commissioner, Himachal Pradesh at Simla who accepted the same and vide his order dated September 9, 1974 restored the grant of nautor land to Gopinder Singh. The Forest Department filed revision petition before the Financial commissioner

(Revenue Appeals) Himachal Pradesh who accepted the revision petition and set aside the order dated September 9, 1974 of the Divisional Commissioner sanctioning nautor land to Gopinder Singh. He further ordered that the amount of Nazarana should be refunded to Gopinder Singh and the land resumed to the State. The Financial Commissioner accepted the appeal on the following two grounds:

- (1) Gopinder Singh felled the trees on the land without waiting for necessary approval of the Divisional Forest Officer and as such he took the law in his own hands.
- (2) Being a teacher in a Government school drawing monthly emoluments of more than Rs.650/- p.m. his economic condition was reasonably good and as such he was not eligible for the grant of nautor land under the Rules.

Against the order of the Financial Commissioner Gopinder Singh filed Civil Writ Petition under Art. 226 of the Constitution of India before the High Court of Himachal Pradesh at Simla which was dismissed in limine on July 28, 1981. This appeal by special leave is by appellant Gopinder Singh against the orders of the Financial Commissioner and of the High Court.

4. Rule 7 of the Rules lays down the categories of persons eligible for the grant of nautor land. The said rule is as under:

"Eligibility for nautor land. - Save for the widow and the children of a member of an armed force or semi-armed force, who had laid down his life for the country (whose widow and children will be eligible for grant anywhere within the Tehsil subejct to the conditions mentioned in the Wajib-ul-arj in respect of the areas where the land applied for is situated) not one who is not the resident in the estate in which the land applied for is situate, shall be eligible for the grant. Every resident of the estate in which the land applied for lies will be eligible in the following order of preference:-

- (a) Such persons who have less than ten bighas of land, whether as owners, or as tenants, or as lessees, either individually or collectively, or have an income of less than Rs. 2,000/- per annum from all sources including lands. Provided that in this category a dependent of one who was laid down his life for the defence of the country shall get preference over his counterparts;
- (b) Scheduled Castes and Scheduled Tribes applicants;
- (c) The dependants of those who have laid down their lives for the defence of the country. Service for the defence of the country will mean service in a uniformed force as well as in the capacity of civilian, so long as the death occurs on a front, be it military or civil;
- (d) Serving personnel in the armed forces and Ex-servicemen;
- (e) Panchayats, and
- (f) others;

Provided that a bona fide landless resident of Spiti shall be eligible for the grant of land in Nautor within the Spiti Sub-Division."

5. The learned counsel appearing for the appellant has relied on first part of Clause (a) of R. 7 to show that the appellant was having less than 10 bighas of land and as such he was eligible for the grant of nautor land. He further contended that even though he may be having an income of more than Rs. 2,000 / per annum as a teacher, he being eligible under the first part, the second part of clause (a) of R. 7 is not attracted in his case. According to him first and the second part of clause (a) of R. 7 are independent to each other and there being or in between the two parts these have to be read disjunctively. He contends that 'or' has to be given its ordinary meaning and it cannot be read as 'and'.

6. We have carefully examined the provisions of clause (a) of R. 7 reproduced above. The clause reads "such persons who have less than 10 bighas of land or have an income of less than 2,000 per annum from all sources including lands". There is thus inherent evidence in the clause itself to show that the two parts cannot be read disjunctively. The second part makes it clear that an income of less than Rs. 2,000/- per annum should be from all sources including lands. It is thus obvious that a person who has got less than 10 bighas of land but has an income of more than Rs. 2,000/- from the said land is not eligible for allotment of nautor land under clause (a). Even otherwise if we interpret the clause the way learned couasel for the appellant wants us to do it would produce absurd result. A person having two bighas of land but otherwise earning Rs. 20,000/- per annum would be eligible for allotment of nautor land if we accept the appellant's interpretation. The object of granting nautor land under the rules is to help poor and unprovided for residents of Himachal Pradesh. Considering the nature, scope and the clear intention of the framers of the Rules it is necessary to read the word "or" in between the first and the second part of clause (a) as "and". The appellant's income was admittedly more than Rs. 2,000 / per annum and as such his claim for nautor land was rightly rejected.

7. We, therefore, do not agree with the contentions raised by the learned counsel for the appellant. The appeal is, therefore, dismissed with no order as to costs.

Appeal dismissed.

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