

# IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 766 of 2018  
Decided on 9.7.2018.

Dev Raj

...Petitioner.

Versus

State of HP and others

... Respondents.

.....  
**Coram**

***The Hon'ble Mr. Justice Sanjay Karol, Acting Chief Justice.***

***The Hon'ble Mr. Justice Ajay Mohan Goel, Judge.***

**Whether approved for reporting?<sup>1</sup>**

**For the petitioners. : Mr. B.C. Negi, Sr. Advocate with Mr. Pranay Pratap Singh, Advocate.**

**For respondents : Mr. Ashok Sharma, Advocate General with Mr. Nand Lal Thakur, Additional Advocate General.**

**Sanjay Karol, Acting Chief Justice(Oral)**

The petitioner has prayed for the following reliefs:-

*“i) Issue a writ of certiorari to quash Annexure P-1 i.e. judgment dated 27.3.2018 passed by the respondent No.3.*

*ii) Issue a writ of mandamus directing the respondent-authorities not to give effect to Annexure P-1 i.e. judgment dated 27.3.2018 passed by the respondent No.3.*

*iii) Issue a writ of mandamus directing the respondent-authorities to process the claim of the petitioner as filed under the Scheduled Tribes and other traditional Forest Dwellers (Recognition of Forest Right) Act, 2006 and Rules framed thereafter.*

*iv) Call for the records pertaining to the case at hand.*

*v) Direct the respondent authorities to pay the cost of the petition.*

<sup>1</sup> Whether reporters of the local papers may be allowed to see the judgment?

*vi) Such other order, which this Hon'ble Court deems fit and proper, may also be passed in favour of the petitioner, in the interest of justice and fair play."*

2. Impugned order dated 27.3.2018, passed by the Collector (Forest)-cum-Divisional Forest Officer, Kinnaur, Forest Division at Reckongpeo has held the writ petitioner to be an encroacher and, as such, eviction orders under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971) stand passed.

3. The challenge to the impugned order dated 27.03.2018 is laid on two counts; (a) principles of natural justice stand violated, inasmuch as, no adequate opportunity of hearing and filing reply was ever afforded to the writ petitioner; and (b) rights of the petitioner under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and its applicability to the premises in question were never considered.

4. Our attention is also invited to the averments made in para 10 of the writ petition, which reads as under:-

*"That other than the aforesaid on a conjoint reading of the preamble of the constitution, Fundamental Right contained therein and the directive Principles enshrined therein specifically Article 14, 19, 21, 38, 39, 46 it becomes evident that social, economic empowerment of the Scheduled Tribe is an objective sought to be attained by the implementation of the Constitution of India. Therefore, economic, social empowerment of Scheduled Tribes has been enshrined as a Fundamental Right guaranteed by the Constitution of India."*

5. In response to the said averments, the Chief Conservator of Forests (T) Rampur Forest Circle at Rampur, who has filed his affidavit on 7<sup>th</sup> May, 2018, has simply averred as under:-

*“The contents of this para are admitted and needs no submission.”*

6. In the affidavit dated 8<sup>th</sup> May, 2018 of the Deputy Commissioner, Kinnaur District at Reckong Peo filed on behalf of the Government of Himachal Pradesh, we notice that in the corresponding para of the reply he has not dwelled on this aspect.

7. After the matter was heard for some time, we deem it appropriate to dispose of the present petition on the following mutually agreed terms:-

a) For the reasons that principles of natural justice stood violated and that order dated 27.3.2018 stood passed by Collector (Forest)cum-Divisional Forest Officer, Kinnaur, Forest Division at Reckongpeo without assigning any reasons, the same is quashed and set aside;

b) The original proceedings pending before the appropriate authority under the provisions of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 is restored for decision afresh;

c) Parties undertake to fully cooperate and appear before the said authority on 20<sup>th</sup> July, 2018;

- d) Liberty is reserved to the parties to place additional material before the appropriate authority, if so required and desired;
- e) The appropriate authority shall decide the proceedings, in accordance with law, within a period of three months from today, after hearing all concerned,
- f) While passing orders, the appropriate authority shall assign reasons, copies whereof shall be supplied to the parties;
- f) Liberty is reserved to the writ petitioner to approach the Court again, if need so arises subsequently; and
- g) Liberty is also reserved to the petitioner to approach the State, bringing to its notice the applicability of the provisions of the Scheduled Tribes and other Traditional Forrest Dwellers (Recognition of Forest Rights) act, 2006, to enable the State to take appropriate decision thereupon, in accordance with law.

We clarify that all issues are left open.

Petition stands disposed of, so also miscellaneous applications, if any.

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**(Sanjay Karol)**  
**Acting Chief Justice**

**(Ajay Mohan Goel)**  
**Judge**

9<sup>th</sup> July, 2018  
(bhupender/guleria)