



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No. 8554 of 2024

Reserved on : 19.06.2025

Decided on: July 04, 2025

Nishant Mahajan & Anr. ...Petitioners

Versus

State of Himachal Pradesh & Ors. ...Respondents

Coram:

Ms. Justice Jyotsna Rewal Dua, Judge

¹*Whether approved for reporting? Yes.*

For the petitioner : Mr. Sunil Mohan Goel, Senior Advocate with Mr. Vipul Sharda & Mr. Abhinav M. Goel, Advocates, for the petitioners.

For the respondents : Mr. Anup Rattan, Advocate General with Mr. Sikander Bhushan, Deputy Advocate General, for respondents No. 1 to 5.

Mr. Maan Singh, Advocate, for respondent No. 6.

Mr. Ankush Dass Sood, Senior Advocate, with Mr. Vivek Negi, Advocate, for the intervener/ respondent No. 7.

Jyotsna Rewal Dua, Judge

In proceedings initiated under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes.*

(in short the 'Act'), Collector, Forest Division Kullu concluded that concerned Block Development Officer, Naggar and Pradhan, Gram Panchayat Nasogi were in unauthorised occupation of forest land; They had encroached forest land in Khasra No. 1328 of Manali – III total measuring 00-68-56 Hac. by breaking this forest land for construction of a cemented road and consequently passed the eviction order on 22.08.2022. Petitioners, third parties to the said litigation, who had enjoyed the road for certain duration feel aggrieved against this order.

2. From the pleadings of the parties following **facts** emerge:-

2(i) FIR No. 142 of 2011 was registered against S/Sh. Ravi and Vikram Singh both sons of Sh. Nihal Chand r/o Village Simsa, Tehsil Manali, Distt. Kullu. The FIR was registered under Sections 447 of Indian Penal Code and 32 & 33 of Indian Forest Act, 1927 at Police Station Manali with the report that the accused persons had encroached upon forest land measuring 01-03-61 Hac. comprised in Khasra Nos. 470, 1316, 1334, 1335, 1336, 1326, 1327 & 1328 in Muhal Simsa & Chhiyal Kothi Manali, Tehsil Manali, Distt. Kullu of Manali-III forest.

Cr. Case No. 45-I/2012 was registered against S/Sh. Ravi & Vikram Singh in the Court of learned Judicial Magistrate 1st Class, Manali, Distt. Kullu. Vide judgment dated 01.08.2014, the accused

persons were acquitted of the charges by extending them benefit of doubt.

2(ii) After registration of FIR No. 142/2011 the revenue officials demarcated the land on 13.02.2013. The officials detected unauthorised occupation of S/Sh. Ravi and Vikram Singh over Government land in Manali-III forest in the afore described eight khasra numbers including Khasra No. 1328; They had encroached the land and broken it by constructing a '*Gompa*' and planted an apple orchard thereon. Based upon the demarcation, notice was issued to the above individuals by the Collector, Forest Division Kullu under Section 4(1) of the Act on 25.03.2013. In view of the objection raised by S/Sh. Ravi & Vikram Singh (respondents therein) against the demarcation conducted by the revenue officials on 13.02.2013, the Collector, Forest Division Kullu ordered for carrying out fresh demarcation. Fresh demarcation was carried out on 28.03.2016 by the revenue and forest officials in presence of representatives of the respondents. The fresh demarcation reported that Khasra No. 1328 was vacant and nine trees of Deodar, one each of Kail and Popular were there on this khasra number. The Collector, Forest Division Kullu vide his order dated 05.04.2016 concluded that land comprised in above described eight khasra numbers including Khasra No. 1328 was vacant. Range Forest

Officer Manali was directed to take over possession of land comprised in these numbers and to fence the area with barbed wire for preventing it from encroachment in future.

The above order was accepted by the respondents therein i.e. S/Sh. Ravi and Vikram Singh. It was not appealed against before the statutory Authority.

2(iii) Sh. Ravi sold some parcels of land owned by him comprised in Khata/Khatouni No. 132 min/181 min, taksim Khasra No. 1333/1, land measuring 00-68-30 Hac. and Khasra No. 1341/1 land measuring 00-12-63 Hac. kita 2 land measuring 00-80-93 Hac. to the extent of his 1/5th share i.e. 00-16-18 Hac. situated in Mohal Simsa Phati Nasogi Kothi & Tehsil Manali, Distt. Kullu to present petitioner No. 1 under sale deed executed in November, 2011. Sh. Ravi also sold land comprised in Khta/Khatouni No. 132min/181min Taksim Khasra No. 1333/1 land measuring 0-68-30 Hectare and Khasra No. 1341/1 land measuring 0-12-63 hectare kita 2 land measuring 0-80-93 Hectare to the extent of his 1/5 share i.e. 0-16-18 Hectare situated in Mohal Simsa Phati Nasogi Kothi and Tehsil Manali District Kullu H.P. under sale deed executed in November, 2011 to petitioner No.2. Petitioner No. 1 is son of petitioner No. 2.

2(iv) On 22.11.2021 one Sh. Arjun Thakur – the Intervener made a complaint on the Chief Minister Sankalp Helpline alleging

construction of road over forest land comprised in Khasra Nos. 1315, 1328 and 1346 in village Rangri for the benefit of commercial private property of the petitioners comprised in Khasra No. 2169/1333. In view of the complaint, demarcation was carried out by the concerned revenue officials on 29.11.2021 in presence of forest officials. Demarcation detected illegal construction of a cemented road in Khasra No. 1328, whereafter, correspondence was exchanged with the Block Development Officer, Naggar as also the Gram Panchayat Nasogi, Tehsil Manali for details of the work done under the name of work *"C/O Road from DAV School to house of Sh. Vikram"*. Based upon the response of concerned Block Development Officer and Pradhan Gram Panchayat, complaint under Section 4(1) of the Act was presented by the Range Forest Officer Manali, Distt. Kullu in the Court of Collector-cum-Divisional Forest Officer, Kullu on 21.03.2022. Show cause notices were issued to the Block Development Officer, Naggar and Pradhan, Gram Panchayat Nasogi on 18.04.2022. The stand of Gram Panchayat Nasogi was that the *"C/O Road from DAV School to house of Sh. Vikram"* was carried out by Gram Panchayat in the year 2018-19; No objection was raised by the Forest Department at that time; Had any objection been raised by the Forest Department the work would not have been started by the Gram Panchayat; It

was four years after the execution of the work that the complaint had been lodged; The work of construction of road was carried out in larger public interest; For executing this work, an amount of ₹1,50,000/- was sanctioned by the Deputy Commissioner Kullu.

The Collector, Forest Division Kullu decided the case on 22.08.2022. He held that respondents – concerned Block Development Officer and Pradhan, Gram Panchayat were in unauthorised occupation of forest land; They had encroached upon forest land in Khasra No. 1328 of Manali-III forest measuring 00-68-56 Hac. by breaking the forest land for construction of cemented road from ‘DAV School to house of Sh. Vikram’ over an area of 00-11-08 Hac. The Collector also made reference to the order passed by Hon’ble Apex Court on 12.12.1996 in WP(C) No. 202 of 1995, titled *T.N. Godavarman Thirumulkpad vs. Union of India & Ors.*² wherein it was held that “the word "forest" must be understood according to its dictionary meaning. This description covers all statutorily recognized forests, whether designated, reserved or protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the Government record

² (1997) 2 SCC 267

irrespective of the ownership". The Collector concluded that the Block Development Officer and Pradhan Gram Panchayat had encroached upon forest land in Khasra No. 1328 measuring 00-11-08 Hac. by breaking forest land and constructing road thereupon. Application was allowed and eviction order was passed against the concerned Block Development Officer and Pradhan, Gram Panchayat.

2(v) The above order was implemented on 25.05.2023. The Forest Department through revenue & police officials got Khasra No. 1328 cleared of encroachments. Its possession was taken over and the land was fenced. On 29.05.2023 the concerned forest officials lodged a report that land in question had again been broken overnight and a road had been paved contrary to order of Collector Forest Division Kullu.

2(vi) The present petitioners on 12.12.2022 moved an application under Order 9 Rule 13 CPC for setting aside the order dated 22.08.2022 passed by Collector Forest, terming it to have been passed *ex parte* against them. Petitioners also moved a separate application under Order 1 Rule 10 CPC for their impleadment in the aforesaid case. The application was dismissed on 27.04.2023.

Petitioners instituted 3rd party appeal before the Divisional Commissioner, Kullu under Section 9 of the Act against the order dated 22.08.2022 passed by the Collector, Forest Division Kullu. The appeal was taken up by the Divisional Commissioner on 26.05.2023. Petitioners submitted before the Appellate Authority that though they were not parties before the Collector, Forest Division Kullu but the road/land from which eviction order had been passed leads to their house and the same was being used by them and general public for the last many years. Keeping this in view and the certificate of Gram Panchayat that road on Khasra No. 1328 had been constructed by it from '*DAV School to house of Sh. Vikram*' at the cost of ₹1,50,000/- sanctioned by the Deputy Commissioner Kullu, the Divisional Commissioner stayed the order passed by the Collector Forest Division, Kullu leaving the question of *locus standi* of the petitioners open. The operation of interim order was extended on 16.10.2023 till 02.02.2024. It appears that the matter could not be taken up on 02.02.2024. The interim application was taken up for consideration on 04.03.2024. The Appellate Authority in its order passed on the said date observed that: (i) Respondents had been evicted by the lower court under order dated 22.08.2022; (ii) The order has been implemented; (iii) Road had been closed by the Forest Department after the passing of order by the Collector

Forest; (iv) Revenue record reflects State as owner of the land; (v) Pradhan, Gram Panchayat Nasogi had admitted before the Court that the Panchayat had only carried out crate work alongside the road but had not constructed the road; (vi) Same dispute was pending before learned Civil Court raised by owners of the adjoining land parcels. At this stage it may be relevant to mention that the aforesaid civil dispute had been raised by none else but Sh. Ravi from whom the present petitioners had purchased their land. The said Sh. Ravi has instituted Civil Suit No. 199/23 in August, 2023 before the Court of learned Civil Judge Manali, Distt. Kullu, *inter alia*, seeking declaration that eviction order dated 22.08.2022 passed by Collector Forest Division was wrong, illegal, null & void *ab initio* with no binding effect upon his rights and that of public at large; (vii) The Appellate Authority further observed that respondents (S/Sh. Ravi & Vikram Singh) had been evicted from this very land in the year 2016 and thereafter in May, 2023; (viii) That all these facts were not before the Court when *ex parte* interim order was granted against the impugned order passed by the Collector Forest Division Kullu on 22.08.2022.

In light of the discussion made in the order, the Appellate Authority held that there was no *prima facie* case or balance of

convenience in favour of the petitioners. Hence, interim order was vacated.

2(vii) At this stage, petitioners instituted CMPMO No. 126 of 2024 before this Court seeking following two reliefs:-

- “(i) That impugned orders Annexure P-23 passed by Ld. Divisional Commissioner as well as passed by respondent No. 2 dated 22.08.2022 below may very kindly be set aside.
- (ii) The (sic: path) over khasra No. old 1328 new 2262/1328 may be restored during the pendency of appeal before respondent No. 1 consequently removing the obstruction created by respondent No. 3.”

The Court dismissed the petition on 02.04.2024 holding that impugned order dated 04.03.2024 (Annexure P-23) passed by the Appellate Authority deciding interim application of the petitioners on merit does not suffer from any jurisdictional error.

2(viii) The third party appeal preferred by the petitioners against order dated 22.08.2022 passed by Collector Forest Division Kullu was dismissed by the Appellate Authority on 10.07.2024 (Annexure P-27). The Appellate Authority – the Divisional Commissioner held that petitioners had no *locus standi* to file the appeal; They were not necessary parties before the Collector Forest, Kullu in the proceedings initiated under the Act.

Feeling aggrieved, the petitioners have instituted the present petition seeking following substantive reliefs:-

“i) That impugned orders Annexure P-27, passed by the Ld. Divisional Commissioner as well as passed by respondent No. 3 dated 22.08.2022 below may very kindly be set aside as the same has passed in violation of principle of natural justice.

ii) That path over khasra No. old 1328 new 2262/1328 may be restored consequently removing the obstruction created by respondent No.4.”

3. Learned counsel for the parties have made submissions on the **following broad points:-**

(i) Petitioners' *locus standi* in assailing the order dated 22.08.2022 passed by Collector Forest Division and instituting this writ petition;

(ii) Effect of order dated 05.04.2016 passed by Collector Forest Division as also the judgment dated 02.04.2024 rendered in CMPMO No. 126 of 2024 upon the present petition;

(iii) Nature of land involved in the dispute;

(iv) The construction over the land in question; and

(v) Suppression of material facts/furnishing misleading facts in the writ petition.

4. I have **heard** learned Counsel for the parties on the above main issues. These points have been discussed hereinafter:-

4(i) Petitioners' locus standi

As observed earlier, the Collector Forest Division Kullu had passed the eviction order on 22.08.2022. Thereafter, petitioners moved applications before the Collector Forest Division for their impleadment in the said case and for setting aside the order dated 22.08.2022 terming it to be 'ex parte' qua them. The application was dismissed on 27.04.2023. Petitioners' third party appeal against the order passed by the Collector Forest Division on 22.08.2022 was also dismissed by the Divisional Commissioner on 10.07.2024. This dismissal was primarily on the grounds that petitioners did not have *locus standi* to file the appeal as they were not necessary parties to the encroachment/eviction case.

4(i)(a) Learned Advocate General appearing for respondents No. 1 to 5 and **learned Senior Counsel for the Intervener** have taken strong objection to the petitioners' *locus standi* for assailing the order passed by the Collector Forest on 22.08.2022. According to them the *lis* before the Collector Forest Division was between State Forest Department on one hand and the concerned Block Development Officer & the Gram Panchayat on the other hand regarding the road unauthorizedly constructed over Khasra No. 1328/Government Forest Land. Petitioners, strangers to the case, were not necessary parties, so justly not impleaded as such in the

lis. They had no *locus standi* to assail eviction order passed by the Collector Forest.

4(i)(b) Learned Senior Counsel for the petitioners submitted that petitioners had been beneficiary of the road constructed over the land in question. The road led to their house; Had petitioners been impleaded as parties before the Collector Forest, they would have demonstrated that land in question was not forest land; Eviction order would not have been passed, had correct facts been presented before the Collector Forest; The Appellate Authority wrongly refused to look into the merits of the matter.

Learned Senior Counsel for the petitioners placed reliance upon *State of Himachal Pradesh & Anr. vs. Umed Ram Sharma & Ors.*³, which holds that every person is entitled to lead life as enshrined in Article 21 of the Constitution of India. The right under Article 21 embraces not only physical existence of life but the quality of life and for residents of hilly areas, access to road is access to life itself. There should be road for communication in reasonable conditions in view of the Constitutional imperatives. Denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution. The society has constitutional obligation to provide roads for communication to

³ AIR 1986 Supreme Court 847

the residents of the hilly areas as far as feasible and possible. The residents in hilly states affected by the denial of proper roads and non-availability of roads have *locus standi* to maintain petition for proper direction.

Para 40 of *Tashi Delek Gaming Solutions Ltd. & Anr. vs. State of Karnataka & Ors.*⁴, was cited which states that '*If the appellants herein had a legal right, they could seek redressal of violation thereof before an appropriate forum. The locus standi to maintain a writ application even otherwise has received liberal interpretation*'.

Definition of term '*locus standi*' as given in *Amanullah & Anr. vs. State of Bihar & Ors.*⁵, was emphasized, as per which '*general meaning of term locus standi is 'place of standing'. Concise Oxford English Dictionary, 10th Edition defines the term 'locus standi' as the right or capacity to bring an action or to appear in a court. The traditional view of 'locus standi' has been that the person who is aggrieved or affected has the standing before the court that is to say he only has a right to move the court for seeking justice. Later, this Court, with justice-oriented approach, relaxed the strict rule with regard to 'locus standi', allowing any person from the society not*

⁴ (2006) 1 SCC 442

⁵ (2016) 6 SCC 699

related to the cause of action to approach the court seeking justice for those who could not approach themselves'.

Learned Senior Counsel for the petitioners urged that petitioners being user of the land were necessary parties. The road over the land in question provided approach to the petitioners' property. The order of the Collector Forest dated 22.08.2022 holding land in dispute to be forest land and thereby passing the eviction order has jeopardized petitioners' right of life. The petitioners, therefore, have *locus standi* to assail the order passed by the Collector Forest.

4(i)(c) Admittedly, petitioners are not owners of Khasra No. 1328 involved in the *lis* before the Collector Forest Kullu. They claim to be user of the road constructed over Khasra No. 1328 as it leads to their property. Considering the petitioners' claim as user of road constructed over Khasra No. 1328 which admittedly is not owned by them, they at best can be said to be raising the plea of having easementary rights over the same or something akin to this plea. This plea even if raised before the Collector Forest would not have impacted the decision of the case. The Collector Forest does not have jurisdiction to venture into this arena. The litigation, plain and simple before the Collector, was that forest land comprised in Khasra No. 1328 had been encroached and broken by the

concerned Block Development Officer and Gram Panchayat. The ownership of land involved was not an issue (It is not even disputed by the petitioners). The Gram Panchayat admitted the allegations but took the defence that it had erected only crate wall over the said Khasra Number to support the road by incurring an expenditure of ₹1,50,000/- sanctioned by the Deputy Commissioner Kullu. The case before the Collector Forest was filed by the State Forest Department – the owner of the land with allegations levelled against the culprits i.e. the concerned Block Development Officer & Gram Panchayat. Merely because a private person has used the Government land as path would not make him a necessary party to the litigation instituted by the owner of the land against the offenders who had encroached & broken the forest land. Petitioners' plea of road being used by them to approach their property is not sufficient for their impleadment in the eviction case. However, in case the petitioners desire a road to be constructed over the land, appropriate necessary steps as available in law are required to be taken by them. It is beyond the domain of Collector Forest to allow the petitioners to keep using the forest land for non-forestry purposes on projected plea of easementary rights or to order that since petitioners need an approach road, therefore, the encroachment over the forest land be not removed. No such case has even been set up in this petition

that State is required to be directed to provide road facility to the petitioners. This petition is essentially against the eviction order passed by the Collector Forest against the accused/violators/culprits who broke the forest land with direction to the Forest Department to take over possession of the encroached forest land. Petitioners were not necessary parties to the *lis* before the Collector Forest. They have no *locus standi* for assailing the order passed by Collector Forest. Mere user of encroachment over the encroached/broken forest land would not make a person necessary party in the eviction proceedings filed by owner of the land against the culprits. Point No. (i) is answered accordingly against the petitioners.

4(ii) Effect of order dated 05.04.2016 passed by Collector Forest.

It was not for the first time that Collector Forest Kullu had ordered removal of encroachment with direction to the Forest Department to take possession of the land over Khasra No. 1328 under order dated 22.08.2022. Prior to this date also, there had been an order passed by the Collector Forest concerning encroachment over Khasra No. 1328 and removal thereof. The said order was passed on 05.04.2016 in Case No. 17(M)/2012-13, instituted by the Forest Department against S/Sh. Ravi and Vikram Singh both sons of Sh. Nihal Chand r/o Village Rangri, Tehsil

Manali, Distt. Kullu. Sh. Ravi is admittedly the same person from whom the petitioners had purchased the property in the year 2011/2012. Proceedings under H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 were instituted against S/Sh. Ravi and Vikram Singh on 25.03.2013. The demarcation of the land conducted by the revenue officials reported breaking of the land comprised in eight khasra numbers including 1328 by constructing a 'Gompa' and planting an apple orchard. The demarcation report was not accepted by respondents therein. A fresh demarcation at their request was ordered by the Collector Forest. Fresh demarcation was conducted on 28.03.2016 in presence of revenue and forest officials as also the representatives of the respondents. The fresh demarcation reported that Khasra No. 1328 was vacant and there were nine trees of Deodar, one tree each of Kail & Popular over it. Over other seven khasra numbers, encroachments were detected. Learned Counsel for the respondents (therein) expressed satisfaction with the demarcation report. The Collector Forest disposed of the case on 05.04.2016 with direction to the Forest Department to take possession of the land comprised in all khasra numbers including 1328 with further direction to fence the area with barbed wire so that no encroachment takes place in future.

Respondents in the aforesaid case – S/Sh. Ravi and Vikram Singh did not assail the aforesaid order in appeal. The order became final. Thus, it is writ large that Khasra No. 1328 belongs to the Forest Department. It has already been held in the order dated 05.04.2016 that S/Sh. Ravi and Vikram Singh had encroached over the land in dispute in the said case by constructing a ‘Gompa’ and planting an apple orchard. The findings have become absolute.

4(iii) Effect of judgment dated 02.04.2024 rendered in CMPMO No. 126 of 2024.

Petitioners had instituted CMPMO No. 126 of 2024 *inter alia* assailing the order dated 22.08.2022 passed by the Collector Forest i.e. the very order impugned in the present petition.

The said petition was dismissed on 02.04.2024. Perusal of the order gives the impression that during hearing of the said case petitioners did not urge any ground for seeking relief against order dated 22.08.2022. Nonetheless, fact remains that petitioners had challenged the order dated 22.08.2022 passed by the Collector Forest in the said petition. In this regard Order 2 Rule 2 of Code of Civil Procedure assumes significance, which reads as under:-

“2. Suit to include the whole claim

(1) Every suit shall include the whole of the claim which the plaintiff is entitled to make in respect of the cause of action;

but a plaintiff may relinquish and portion of his claim in order to bring the suit within the jurisdiction of any Court.

(2) *Relinquishment of part of claim*—Where a plaintiff omits to sue in respect of, or intentionally relinquishes, any portion of his claim, he shall not afterwards sue in respect of the portion so omitted or relinquished.

(3) *Omission to sue for one of several reliefs*—A person entitled to more than one relief in respect of the same cause of action may sue for all or any of such reliefs; but if he omits, except with the leave of the Court, to sue for all such reliefs, he shall not afterwards sue for any relief so omitted.

Explanation: For the purposes of this rule an obligation and a collateral security for its performance and successive claims arising under the same obligation shall be deemed respectively to constitute but one cause of action.”

Having unsuccessfully assailed the Collector Forest's order dated 22.08.2022 in petition under Article 227 of Constitution of India, the petitioners cannot seek to impugn the same order in these proceedings under Article 226 of the Constitution. Regarding this, the submission of learned Senior Counsel for the petitioners is that at the time of filing of the said petition and till its decision on 02.04.2024, the statutory appeal filed by the petitioners against the order dated 22.08.2022 before the Divisional Commissioner was pending. It was for this reason, relief against order dated 22.08.2022 was not pressed.

The above submission is not enough to obviate the impact of Order 2 Rule 2 CPC in the given facts of the case. It is a matter of record that petitioner had assailed order dated 22.08.2022 passed by the Collector Forest in CMPMO No. 126 of 2024. Petition filed under Article 227 of the Constitution was dismissed on 02.04.2024 on certain grounds which may not pertain to merits/validity of order dated 22.08.2022, nonetheless, fact remains that no liberty was reserved to the petitioners by the Court for assailing the Collector Forest's order dated 22.08.2022 in separate proceedings before Appellate Authority or in proceedings under Article 226 of the Constitution of India. It is again a matter of record that statutory appeal preferred by the petitioner was decided and dismissed on 10.07.2024 for want of petitioners' *locus standi* in instituting the appeal. Therefore, in view of provisions of Order 2 Rule 2 CPC; in view of petitioners having unsuccessfully assailed the order dated 22.08.2022 passed by the Collector Forest in CMPMO No. 126/2024, petitioners having not obtained any liberty to institute separate proceedings for assailing the said order, subsequent challenge to the said order, more particularly in this writ petition is not tenable. Point is answered accordingly against the petitioners.

4(iv) Nature of land involved in dispute – Whether land in dispute is a forest land.

Even though it has been held that petitioners have no *locus standi* to agitate against the impugned order passed by the Collector Forest on 22.08.2022 yet with a view to test the veracity of the petitioners' claim that the land in question is not a forest land, the issue is being examined hereinafter to a limited extent.

Annexure P-1 is the copy of jamabandi of land in question for the year 2016-17. This jamabandi reflects Khasra No. 1328 to be owned by the State of Himachal Pradesh. The nature of land is "बगीचा बाथल फलदार".

At this stage, it would be pertinent to take note of the demarcation conducted by the revenue officials in the proceedings initiated against S/Sh. Ravi and Vikram Singh before the Collector Forest Division under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act in Case No. 17(M)/2012-13. The demarcation carried out on 13.02.2013 reported that the land in question including Khasra No. 1328 had been encroached & broken by constructing a 'Gompa' and planting an apple orchard. The said demarcation was not accepted by the respondents therein. The fresh demarcation report dated 28.03.2016 which was accepted by the respondents (therein) had found Khasra No. 1328 vacant with

09 Deodar, 01 Kail & 01 Popular tree growing there. Under the eviction order dated 05.04.2016 passed in the matter, the Collector Forest had also directed fencing of the area to prevent from being encroached in future. It was not the stand of the respondents (therein) in the aforesaid eviction case that Khasra No. 1328 was not a forest land or it was not a government land. Order dated 05.04.2016 passed by the Collector Forest has attained finality. Incidentally, petitioners have purchased their land from the respondents in the case No. 17(M)/2012-13. It is for approach to their such lands that they seek continued use of Khasra No. 1328. Even in Case No. 1(M)/2021-22 instituted by the Forest Department against the concerned Block Development Officer and Gram Panchayat Nasogi, it was nobody's case that land in question was not a forest land. The defence taken was that the Forest Department had not raised any objection at the time of raising of the construction of road.

Learned Senior Counsel for the petitioners submitted that in terms of Section 4 of the Forest (Conservation) Amendment Act, 2023 *inter alia* "such forest land situated alongside a rail line or a public road maintained by the Government, which provides access to a habitation, or to a rail, and roadside amenity up to a maximum size of 0.10 hectare in each case" shall not be covered under the

provisions of the Act. This submission was effectively countered by the learned Advocate General by inviting attention to Hon'ble Apex Court order dated 30.11.2023 passed in *Ashok Kumar Sharma, Indian Forest Service (Retd) & Ors. vs. Union of India & Anr.*⁶ wherein the statement of learned Additional Solicitor General of India was recorded that no precipitative actions will be taken by the Union of India until further orders in respect of the forest, as understood in accordance with the dictionary sense.

It would also be in place to bear the meaning of word 'forest' as construed by the Hon'ble Apex Court in *T.N. Godavarman Thirumulkpad*². Relevant portion thereof reads as under:-

"4. The Forest Conservation Act, 1980 was enacted with a view to check further deforestation which ultimately results in ecological imbalance; and therefore, the provisions made therein for the conservation of forests and for matters connected therewith, must apply to all forests irrespective of the nature of ownership or classification thereof. The word "forest" must be understood according to its dictionary meaning. This description cover all statutorily recognised forests, whether designated as reserved, protected or otherwise for the purpose of Section 2(i) of the Forest Conservation Act. The term "forest land", occurring in Section 2, will not only include "forest" as understood in the dictionary sense, but also any area recorded as forest in the

⁶ Writ Petition (C) No. 1164/2023

Government record irrespective of the ownership. This is how it has to be understood for the purpose of Section 2 of the Act. The provisions enacted in the Forest Conservation Act, 1980 for the conservation of forests and the matters connected therewith must apply clearly to all forests so understood irrespective of the ownership or classification thereof. This aspect has been made abundantly clear in the decisions of this Court in *Ambica Quarry Works and ors. vs. State of Gujarat and ors.*⁷; *Rural Litigation and Entitlement Kendra vs. State of U.P.*⁸; and recently in the order dated 29th November, 1996 in *Supreme Court Monitoring Committee vs. Mussorie Dehradun Development Authority and ors.*⁹. The earlier decision of this Court in *State of Bihar Vs. Banshi Ram Modi and ors.*¹⁰ has, therefore, to be understood in the light of these subsequent decisions. We consider it necessary to reiterate this settled position emerging from the decisions of this Court to dispel the doubt, if any, in the perception of any State Government or authority. This has become necessary also because of the stand taken on behalf of the State of Rajasthan, even at this late stage, relating to permissions granted for mining in such area which is clearly contrary to the decisions of this Court. It is reasonable to assume that any State Government which has failed to appreciate the correct position in law so far, will forthwith correct its stance and take the necessary remedial measures without any further delay."

⁷ (1987) 1 SCC 213

⁸ 1989 Supp.(1) SCC 504

⁹ WP(C)No. 749 of 1995 decided on 29.11.1996 (Supreme Court of India)

¹⁰ (1985) 3 SCC 643

*Nature Lovers Movement vs. State of Kerala & Ors.*¹¹

holds that 'After the enforcement of the 1980 Act, neither the State Government nor any other authority can make an order or issue direction for dereservation of reserved forest or any portion thereof or permit use of any forest land or any portion thereof for any non-forest purpose or assign any forest land or any portion thereof by way of lease or otherwise to any private person or to any authority, corporation, agency or organisation not owned, managed or controlled by the government except after obtaining prior approval of the Central government'.

Pertinently, under Notification No. Ft.29-241-BB/49, dated 25.02.1952 issued by State of Himachal Pradesh in exercise of powers conferred by Section 29 of the Indian Forest Act, provisions of Chapter IV of the Act have been made applicable to all forest lands or waste lands in Himachal Pradesh over which Government of Himachal Pradesh has proprietary rights or to the whole or any part of the produce of which the Government is entitled as recorded in the forest settlements or land revenue settlements or land revenue records of the integrated states, or otherwise, subject to the exceptions mentioned therein. Learned Senior Counsel for the

¹¹ (2009) 5 SCC 373

petitioners could not point out as to why the land in question is not to be considered as covered by this Notification.

In the instant case, the eviction order passed by the Collector Forest Division on 05.04.2016 has attained finality. The eviction order passed by the Collector Forest on 22.08.2022 regarding the same land has also become final. The petitioners have even otherwise no *locus standi* to assail the aforesaid order. The land involved is not owned by the petitioners. Land with Deodar, Kail & Popular trees standing on it recognized as undemarcated protected forest land owned by the State is forest land. There is no permission on record for use of this forest land for non-forest purpose. Merely asserting their need to use the encroachment – the road over the forest land is not sufficient in law to allow the petitioners continued use of forest land contrary to law and the dictum of Hon'ble Apex Court.

4(v) Presenting distorted facts in the writ petition.

In following paragraphs No. 10 & 11 of the petition, petitioners have given the impression as if there had been a full fledged road over the land in question, which had been used from times immemorial by the General Public including the petitioners and due to eviction order passed by the Collector Forest Kullu, public in general has been put to great inconvenience:-

“10. That the petitioners and local residents who were using this road since time immemorial were not added as parties and respondent No. 3 vide order dated 22.08.2022 passed the eviction order against the respondent No. 5 and 6.

11. That the road exist on the Khasra No. 1328 leads to the houses of petitioners., other co-villagers and to DAV public school Manali and this road also caters the needs of other inhabitants of the area and this was existing before the independence and it was further developed by HPPWD in the year 1972 and all the houses which were constructed there after getting the map approved from Town and Country Planning department the construction were raised and one of the map which is approved by TCP is placed on record as Annexure P-12 (Colly).”

Taking note of the above pleadings & disputes raised qua these facts by the respondents, following order was passed in the matter on 22.11.2024:-

“Reply on behalf of respondents No.1, 3 and 4, though stated to have been filed, but the same is not on record. Similarly, rejoinder to afore reply is stated to have been filed but the same is also not on record. Registry to trace and place on record the same, if in order.

On the next date of hearing, learned Additional Advocate General may have specific instructions whether there is any *abadi* beyond the disputed road or whether same is used by children to approach DAV Public School, Manali. Besides above, learned Additional Advocate General may also verify “whether road in question is connected to

some other road and same is being used for times immemorial by the other villagers”.

List on 18.12.2024. In the meantime, parties may complete pleadings, if not already completed.”

Pursuant to above, the Divisional Forest Officer Kullu placed on record instructions dated 17.12.2024. In terms of these instructions the land in question comprised in Khasra No. 1328 is forest land/Government land and being forest land, its use for non-forestry purpose requires prior approval of the competent authority; The road in question does not lead to any other village; It was not used by the students to approach DAV School as claimed by the petitioners; The disputed road is not being used by the local people, rather same is being used by S/Sh. Nishant Mahajan & Khushal Chand Mahajan (present petitioners) and Ravi Chand Thakur & Vikram Thakur (petitioners in Case No. 17(M)/2012-13 in the Court of Collector Forest Division, Kullu).

The above report on facts makes it evident that the petitioners have endeavoured to mislead the Court by projecting as if the road in question had been in existence from times immemorial and was also being used by the general public. The road was not in existence over Khasra No. 1328 from times immemorial. Encroachments over Khasra No. 1328 were removed in

the year 2016 under the Collector Forest's order dated 05.04.2016.

It was found in the demarcation report dated 28.03.2016 that this number was vacant with trees standing over it. The land was encroached again and resulted in institution of second eviction case before Collector Forest on 22.08.2022. The report placed on record by the respondents establishes that the road/path was not being used by the general public or for that matter anyone else besides the petitioners. The path only led to property of the petitioners. Further, it is to be noticed that actually there had been no *pucca* road over the land in dispute. The Gram Panchayat had spent ₹1.5 lacs sanctioned by the Collector for putting some stone crates over the land.

No other point was urged.

5. In view of the above discussion, this petition being devoid of merit is dismissed.

Pending miscellaneous application(s), if any, also stand disposed of.

**Jyotsna Rewal Dua,
Judge**

July 04, 2025 (PK)