



IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.3529 of 2025

Date of Decision: 14.09.2026

Shanti

.....Petitioner

Versus

State of Himachal Pradesh & others

... Respondents

Coram:

Hon'ble Mr. Justice Sandeep Sharma, Judge.Whether approved for reporting? ¹ Yes.**For the Petitioner:** Mr. Sunil Chauhan, Advocate.**For the Respondents:** Mr. Rajan Kahol & Mr. Vishal Panwar, Additional Advocate Generals with Mr. Ravi Chauhan & Mr. Anish Banshtu, Deputy Advocates General.**Sandeep Sharma, Judge** (oral):

By way of instant petition filed under Article 226 of the Constitution of India, petitioner has prayed for following main relief:-

" That the appropriate writ, order or directions may kindly be issued against the respondents by directing them to issue order of sanction and patta of the land compromised in Khasra Nos. 2506/1/1 and 2713/2510/1, kita-2, measuring 3-2 bigha in Chak Navni, Patwar Circle Pul Bahal, Tehsil Chopal, District Shimla, Himachal Pradesh."

2. Precisely, the grouse of the petitioner, as has been highlighted in the petition and further canvassed by Mr. Sunil Chauhan, learned counsel representing the petitioner, is that despite

¹Whether the reporters of the local papers may be allowed to see the judgment?

there being no dispute that petitioner herein is the daughter of late Sh. Mina Ram, in whose favour Nautor land was granted and due to fault of revenue authorities, no *patta* was signed, prayer made on behalf of the petitioner for grant of *patta* in her favour after death of her father Sh. Mina Ram as well as mother Smt. Sewati Devi, is not being considered.

3. Precisely, the facts of the case, as emerge from the pleadings adduced on record by the respective parties, are that Sh. Mina Ram son of Shri Dhirju had applied for grant of land bearing old Khasra Nos. 2506/1/1 and 2713/2510/1, kita-2, measuring 3-2 bigha situated in revenue Village Navni, Tehsil Chopal under Nautor Rules/ Scheme, 1968, being eligible for allotment of land for cultivation purpose. The then Revenue Assistant, Chopal, sanctioned the land to the extent of 3 bighas 2 biswas in revenue Village Navni, Tehsil Chopal on 25.08.1972 for cultivation (**Annexure R-1**). Though, after grant of land under Nautor Rules, possession of the land in question was handed over to aforesaid Sh. Mina Ram, but on account of sheer negligence on the part of the revenue officials, *patta* was though prepared, but not signed. Unfortunately, Sh. Mina Ram died on 25.11.1990 and thereafter his widow, Smt. Sewati Devi applied for the preparation/issuance of *patta*, which though was prepared, as is evident from **Annexure P-6** (available at page No.26 of the paper

book), but was not signed by the competent authority, as a result thereof, land which otherwise stood allotted in favour of Sh. Mina Ram and thereafter in favour of Smt. Sewati Devi under Nautor Rules was never mutated in the names of both the above persons. Smt. Sewati Devi also passed away on 29.12.2012, leaving behind only one legal heir i.e., petitioner herein, who again requested for grant of patta in her favour, vide communication dated 17.01.2023, addressed to the Deputy Commissioner, Shimla (**Annexure P-9**). Though, on the instructions of Deputy Commissioner, Shimla, the Sub-Divisional Magistrate, Chopal, verified actual position and recommended the case of the petitioner for the grant of *patta* (**Annexure P-10**), but vide communication dated 01.01.2024 issued under the signatures of Additional District Magistrate, Shimla, prayer made on behalf of the petitioner came to be rejected on the ground that as per clarification dated 21.08.1980 (**Annexure R-3**), married daughters are not entitled for sanction of land under Nautor Rules. In the aforesaid background, petitioner has approached this Court in the instant proceedings, praying therein for the relief, as has been reproduced hereinabove.

4. Precisely, the case of the petitioner is that the petitioner herein never applied for grant of *patta* being married daughter of the original grantee late Sh. Mina Ram, rather she is claiming such suit land in the capacity of Class-I legal heir of the original allottee, , who

was allotted the land in the year, 1972 and since then above named Mina Ram and thereafter his wife and at present she is in cultivating possession of the land, which fact has been not refuted by the respondents. While making this Court peruse the Himachal Pradesh Nautor Land Rules, 1968, learned counsel for the petitioner argued that as per Rules, where the father is alive, his son or daughter, and where the husband is alive, his wife, shall not be eligible to apply for Nautor land, save and except if a son, daughter, or wife proves that the father or husband, as the case may be, has disinherited or separated him/her, or has renounced the world. He submitted that there is nothing in the rules, which suggests that married daughter cannot apply for grant of *patta*. Mr. Chauhan further submitted that by now it is well-settled that administrative instructions cannot override statutory rules which have the force of law. He contended that even otherwise, it is well-settled that a married daughter, who is dependent upon her parents, cannot be deprived of her entitlement, if any, in the capacity of a Class-I legal heir of the original allottee.

5. To substantiate his aforesaid submissions, he placed reliance upon the judgment rendered by the Hon' ble Supreme Court in case titled ***Kusum Nisha v. State of U.P. and Others***, Civil Appeal No. 7667 of 2025, decided on 02.06.2023, wherein Hon'ble Apex Court, having taken note of scheme framed under the Essential

Commodities Act, 1955 for allotment/grant of fair price shops, proceeded to conclude that a son continues to remain within the fold of the family irrespective of his marital status, whereas a daughter is excluded solely because she is married. Hon'ble Apex Court held that distinction is founded upon a gender-based stereotype that a daughter, upon marriage, becomes a member of another family and loses all ties with her natal family and such a presumption is incompatible with the constitutional guarantee of equality and perpetuates historical notions of gender inequality which the Constitution seeks to eradicate.

6. Having heard learned counsel for the parties and perused material available on record, especially reply filed by the respondents, this Court finds that there is no dispute that Sh. Mina Ram, father of the petitioner, was granted the suit land under Nautor Rules in the year 1972 and thereafter, he remained in continuous possession and enjoyed the same until his demise on 25.11.1990 and thereafter his wife, Smt. Sewati Devi, came in spossession and continued to enjoy the suit land until her death in the year 2012. The present petitioner, who is the sole legal representative of deceased Mina Ram and Smt. Sewati, is in cultivating possession of the suit land till date.

7. It has been categorically admitted by the respondents in their reply that though *patta* was prepared on two occasions, but yet

for reasons best known to the revenue authorities, same was not signed. Firstly, the *patta* was prepared at the time of grant of Nautor land under the Nautor Rules in favour of Mina Ram, as is evident from **Annexure P-3**, but before the *patta* could be signed by the competent authority, Sh. Mina Ram passed away and thereafter, his widow, Smt. Sewati Devi again requested for issuance of *patta*, which, though was prepared, but was again not signed (**Annexure P-6**). However, on account of grant of *patta* in favour of Sh. Mina Ram and thereafter Smt. Sewati, suit land remained in continuous possession of Sh. Mina Ram, Smt. Sewati and thereafter present petitioner, who is the sole legal representative of both the aforesaid deceased persons. Petitioner herein, after death of Smt. Sewati, also applied for grant/issuance of *patta* being sole legal representative of Sh. Mina Ram and Smt. Sewati vide communication dated 17.01.2023 (**Annexure P-9**), but despite there being recommendation made by SDO (Civil), Chopal (**Annexure P-10**), competent authority rejected the claim of the petitioner on the untenable ground that as per the clarification issued under the Nautor Rules, a married daughter is not entitled for grant of *patta*.

8. At this stage, it would be apt to take note of Rules 7 and 8 of the Himachal Pradesh Nautor Land Rules, which reads as under:-

7. Eligibility for Nautor land.

- Save for the widow and the children of a member of an armed force or semi-armed force, who has laid down his life for the country (whose widow and children were eligible for grant anywhere within the Tehsil subject to the conditions mentioned in the wajib-ul-Arj in respect of the areas where the land applied for is situated) no one who is not the resident in the estate in which the land applied for is situated, shall be eligible for the grant. Every resident of the estate in which the land applied for lies will be eligible in the following orders of preference:

(a) Such persons who have less than ten bighas of land under self cultivation on 1.1.1974, 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 has laid down his life for the defence of the country will get preference over his counterparts.

(b) Scheduled Castes and Scheduled Tribes applicants; and

(c) The deponents 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) Services personnel in the armed forces and Ex-Servicemen.

(e) Panchayats.

(f) Others

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

8. Where the father is alive, his son or daughter and where the husband is alive, his wife, shall not be eligible to apply for nautor land except as follows: -

Exceptions - (a) If a son or a daughter or a wife proved that the father or the husband, as the case may be has disinherited or separated him or her, or has renounced the words, such a son or daughter or wife, as the case may be, will be eligible for nautor land.

(b) It a serving member of the Armed Forces or his son happens to have applied for nautor land in the life time of his father, he will be eligible for nautor land to the extent of his inheritable share in the father's landed property on the date of the sanction of the nautor land that falls short of the ceilings prescribed under these rules.

9. Rule 7 deals with eligibility for the allotment of Nautor land. Careful perusal of aforesaid provision of law nowhere suggests that married daughter is not entitled to apply for Nautor land. Rule 8 provides that where a father is alive, his son or daughter and where the husband is alive, his wife shall not be eligible to apply for Nautor land, except where such son, or daughter or wife proves that the father or husband, as the case may be, has disinherited or separated him/her, or has renounced the world, in that eventuality such son, daughter, or wife shall be eligible for Nautor land. The aforesaid rule clearly provides that a son or daughter can also apply for Nautor land, but not during the lifetime of their father. There is no specific rule under Nautor Rules which debars married daughter from claiming land under the said Rules. Moreover, in the instant case, an attempt has been made to refute the claim of the petitioner on the strength of an administrative clarification issued vide communication dated 21.08.1980 (**Annexure R-3**).

10. At this stage, it would be apt to take note of the relevant portion of the aforesaid letter, which reads as under:-

“ With reference to the above subject, it has been clarified several times that if the applicant dies after the Nautor (grant of land for cultivation) has been approved but before the issuance of the Patta, then what procedure should be followed.

In this context, I have been directed to say that in such cases, a review should be conducted and the sanction should be re-issued in the names of the legal heirs under Category-1 as per the Hindu Succession Act. If the Category-1 legal heirs include married daughters, the land area should not be allotted in their names. The rest of the legal heirs should be considered for sanction.

In the absence of any Category-1 legal heirs, the Nautor grant should be cancelled.”

11. Careful perusal of aforesaid communication suggests that the Government has decided that a review should be conducted and sanctions be re-issued in the names of legal heirs under category-I as per the Hindu Succession Act. If the category -I legal heirs include married daughters, the land should not be allotted in their names, rather the rest of the legal heirs should be considered for sanction.

12. Though, this Court is of the view that aforesaid communication, being an administrative clarification, cannot override the statutory rules which have the force of law, but even otherwise, this Court cannot lose sight of the fact that subsequent to the issuance of aforesaid instructions, law has undergone a sea change. At present, as per the Hindu Succession Act, 1956, married daughter

is also entitled to coparcenary rights. Moreover, in the case at hand, this Court finds it necessary to clarify that petitioner herein is not claiming *Patta* on account of her being unmarried daughter of late Sh. Mina Ram and Smt. Sewati, rather she being Class-I legal heir of the aforesaid persons, prayed for issuance of *Patta* in her favour.

13. Learned counsel for the petitioner placed reliance upon the judgment passed by Hon'ble Apex Court in **Tej Prakash Pathak and others vs. Rajasthan High Court and others**, (2025) 2 Supreme Court Cass 1, wherein it has been held as under:-

“62. There can therefore be no doubt that where there are no rules or the rules are silent on the subject, administrative instructions may be issued to supplement and fill in the gaps in the rules. In that event administrative instructions would govern the field provided they are not ultra vires the provisions of the rules or the statute or the Constitution. But where the rules expressly or impliedly cover the field, the recruiting body would have to abide by the rules.

14. Learned counsel representing the petitioner also placed reliance upon the judgment passed by Hon'ble Apex Court in case titled **Sivanandan C.T. and others vs. High Court of Kerala and others**, (2024) 3 Supreme Court Cases 799, wherein it has been held as under:-

“15. For the above reasons, we have come to the conclusion that the broader constitutional issue which has been referred in *Tej Prakash Pathak* [*Tej Prakash Pathak v. Rajasthan High Court*, (2013) 4 SCC 540 : (2013) 2 SCC (L&S) 353] would not merit decision on the facts of the present case. Clearly, the decision which was taken by the High Court was ultra vires Rule 2(c)(iii) as it stands. As a matter of fact, during the course of the hearing we have

been apprised of the fact that the Rules have been subsequently amended in 2017 so as to prescribe a cut-off of 35% marks in the viva voce examination which however was not the prevailing legal position when the present process of selection was initiated on 30-9-2015. The Administrative Committee of the High Court decided to impose a cut-off for the viva voce examination actuated by the bona fide reason of ensuring that candidates with requisite personality assume judicial office. However laudable that approach of the Administrative Committee may have been, such a change would be required to be brought in by a substantive amendment to the Rules which came in much later as noticed above. This is not a case where the rules or the scheme of the High Court were silent. Where the statutory rules are silent, they can be supplemented in a manner consistent with the object and spirit of the Rules by an administrative order.

16. In the present case, the statutory rules expressly provided that the select list would be drawn up on the basis of the aggregate of marks obtained in the written examination and the viva voce. This was further elaborated in the scheme of examination which prescribed that there would be no cut-off marks for the viva voce. This position is also reflected in the notification of the High Court dated 30-9-2015. In this backdrop, we have come to the conclusion that the decision of the High Court suffered from its being ultra vires the 1961 Rules besides being manifestly arbitrary.”

15. Reliance is also placed upon the judgment passed by Hon'ble Apex Court in **Dr. Rajinder Singh vs. State of Punjab and others, (2001) 5 SCC 482**, wherein it has been held as under:-

“7. The settled position of law is that no government order, notification or circular can be a substitute of the statutory rules framed with the authority of law. Following any other course would be disastrous inasmuch as it would deprive the security of tenure and right of equality conferred upon the civil servants under the constitutional scheme. It would be negating the so far accepted service jurisprudence. We are of the firm view that the High Court was not justified in observing that even without the amendment of the Rules, Class II of the service can be treated as Class I only by way of notification. Following such a course in effect amounts to amending the rules by a government order and ignoring the mandate of Article 309 of the Constitution.”

16. True it is that despite there being grant of *Patta* in favour of Sh. Mina Ram and Smt. Sewati, no formal *Patta* was issued in their favour, but it is not in dispute that after grant of *Patta* in the year 1972, both Mina Ram and Sewati and thereafter present petitioner remained in cultivation possession of the land in question, which till date has not been resumed by the State Government.

17. If the application dated 17.01.2023 (Annexure P-9) filed by the petitioner is perused, it clearly reveals that she has nowhere stated that she may be granted land under Nautor Rules, rather her specific prayer is that she be allowed and granted 03-02 bighas of land situated in Revenue Estate Navni, Pargana Bahal, Tehsil Chopal, District Shimla in terms of order of sanction and payment of compensation deposited by her mother, Smt. Sewati in favour of State of Himachal Pradesh, as per the documents attached in the interest of justice. Though, Sub-Divisional Officer (Civil), Chopal, having taken note of aforesaid request made by the petitioner, rightly recommended petitioner's case, but totally for unjustifiable reasons as noted hereinabove, claim of the petitioner has been rejected.

18. At this stage, it would be apt to take note of the judgment passed by Hon'ble Apex Court in ***Kusum Nisha case*** (supra), which admittedly was in the context of the rules framed under Section 3 of the Essential Commodities Act, 1955, but in that case, distinction was

attempted to be made by the respondents in denying the rightful claim of the married daughter. Hon'ble Apex Court made very important observation that *"where a distinction is founded upon a gender-based stereotype that a daughter upon marriage becomes a member of another family and loses all ties with her natal family, such presumption is incompatible with the constitutional guarantee of equality and perpetuates historical notions of gender inequality which the Constitution seeks to eradicate"*. It has been observed in the judgment supra as under:-

"18. Examined on the touchstone of these principles, the exclusion of a married daughter from the definition of "family" cannot be Shri Ram Krishna Dalmia & Ors. vs. Shri Justice S.R. Tendolkar & Ors., 1958 SCC OnLine SC 6 Budhan Choudhry vs. State of Bihar & Ors.; (1954) 2 SCC 791 Bombay Dyeing & Mfg. Co. Ltd. vs. Bombay Environmental Action Group & Ors., (2006) 3 SCC 434; A.P. Dairy Development Corporation Federation vs. B. Narasimha Reddy, (2011) 9 SCC 286; Shayara Bano vs. Union of India & Ors., (2017) 9 SCC 1; K.S. Puttuswamy & Anr. vs. Union of India & Ors., (2017) 10 SCC 1; Nikesh Tarachand Shah vs. Union of India & Anr., (2018) 11 SCC 1 sustained. The object of allotment under the dependent quota is to provide immediate succour to the family of a deceased dealer facing financial hardship. The relevant considerations are dependency, financial need, residence, and the ability of the applicant to discharge the obligations attached to the dealership. Marital status bears no rational nexus to any of these considerations.

19. The impugned provision proceeds on the assumption that upon marriage a daughter ceases to be a member of, or dependent upon, her parental family. Such an assumption is constitutionally impermissible. Marriage neither extinguishes the bond between a daughter and her parental family nor furnishes a valid basis to presume absence of dependency. Contemporary social realities demonstrate that many married daughters continue to reside with, support, or remain dependent upon their parents. Equally, there may be sons who are not dependent upon the family despite being

included within the definition. Dependency is a question of fact and cannot be conclusively determined by reference to marital status alone.

20. Significantly, the scheme does not exclude a married son from consideration. A son continues to remain within the fold of the family irrespective of his marital status, whereas a daughter is excluded solely because she is married. The distinction is founded upon a gender-based stereotype that a daughter, upon marriage, becomes a member of another family and loses all ties with her natal family. Such a presumption is incompatible with the constitutional guarantee of equality and perpetuates historical notions of gender inequality which the Constitution seeks to eradicate.

21. The submission of the State that a married daughter may not satisfy the requirement of local residence is equally untenable. Residence constitutes an independent eligibility criterion under Paragraph IV(5) of the G.O. Whether an applicant satisfies that requirement must be determined on the facts of each case. A blanket exclusion of all married daughters cannot be justified on the speculative assumption that every married daughter necessarily resides elsewhere. Constitutional adjudication cannot be founded on presumptions that are overbroad and disconnected from lived realities."

19. Consequently, in view of the detailed discussion made hereinabove as well as law taken into consideration, this Court finds merit in the present petition and accordingly, same is allowed. Impugned order dated 01.01.2024(Annexure P-11) is quashed and set aside. The respondents are directed to consider and decide the application filed by the petitioner dated 17.01.2023 (Annexure P-9) afresh taking note of observations/findings made/rendered hereinabove and if found otherwise eligible issue order of sanction and *Patta* in respect of the land comprised in Khasra Nos. 2506/1/1 and 2713/2510/1, measuring 3 bighas 2 biswas (new Khasra Nos. 666, 674 and 691/1, kitas-3, measuring 0-23-46 hect.) in revenue

village Navni, Tehsil Chopal, in favour of the petitioner, expeditiously and preferably within a period of two months from today. Pending miscellaneous application(s), if any, shall also stand disposed of.

**(Sandeep Sharma),
Judge**

September 14,2026
(shankar)

High Court of HP