

STATE OF HIMACHAL PRADESH AND ORS.

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v.

MANGAT RAM AND ORS.

OCTOBER 24, 1994

[M.N. VENKATACHALIAH, C.J. AND S. MOHAN, J.]

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*Himachal Pradesh Land Preservation Act, 1978—Section 7—HP Land Preservation Rules, 1983—Rule 4 (2) (e)—Himachal Pradesh Land Revenue Act, 1973—Sections 17, 107—Purchase of land for raising orchards—demarcation of land for marking and cutting of trees—Assistant Collector Gr. II is competent person to effect demarcation—His report is final—Revisional powers of Financial Commissioner are circumscribed by statutory provisions—Rules not applicable to lands in Theog Forest Division.*

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The respondent purchased land in Tehsil Theog, District Shimla from private owners for the purpose of planting an apple orchard during the year 1981-1982. The area is surrounded by thick forests from all sides. In order to raise an apple orchard felling of trees was required in the said area.

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Some of the respondents made an application for demarcation of the land in question for the purposes of marking and cutting of trees. The Assistant Collector Grade II on 7th December, 1987 carried out the demarcation. He submitted the report with the noting that the verification of the report is required to be done by Senior Land Revenue Officer.

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Thereafter on 14th December, 1989, the lands were demarcated. This was duly informed to the respondents. Since the State was not satisfied by the demarcation done by the Additional Collector the land was again demarcated by the Assistant Settlement Officer. He submitted a report stating that the felling was permissible under 10 years programme during 1999-2000.

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The respondents filed Writ Petition for a direction to carry out and finalise the demarcation and a further direction to issue necessary permission to cut and remove the trees. The High Court allowed the Writ Petition holding that the report of Assistant Collector Gr. II was

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- A final. It directed the appellants to accord sanction to the respondents for clear felling of trees within a period of one month.

The State has filed this appeal against the judgment of the High Court. It is alleged that the report of the Assistant Collector cannot be treated as final since u/s 17 of the Himachal Pradesh Land Revenue Act, 1973, the Financial Commissioner has got unlimited revisional powers. Where, therefore, at his direction there were further reports of the Assistant Settlement Officer and Additional Collector, reliance cannot be placed on the report of the Assistant Collector Grade II. Besides, the report of the Assistant Collector contained so many infirmities and Rule 4 (2) (E) prohibits felling even for the purposes of raising an orchard.

Respondents submitted that the Assistant Collector Grade II had the necessary authority u/s 107 of the Revenue Act and that power is exercisable only by him and no one else. If that is the final report, the question of Financial Commissioner exercising revisional powers u/s 17 of the Revenue Act could not arise. It was further submitted that the permission to fell trees had been given in several other cases and the bar of 10 years felling programme cannot be applied in this case. Right from the date of purchase these respondents have been vigorously pursuing their application for permission to fell trees, merely because of the pendency of that application with the 10 years programme as 1989-90 cannot be made applicable. Such a programme must relate to 1982-83 during which year there was no bar.

Disposing of the matter, this Court

HELD 1.1. The report of the Assistant Collector Grade II is final. The Assistant Collector Grade II is the competent person to effect demarcation. His report is final. Assistant Collector Grade II is a Revenue Officer as defined u/s 4 (17) r/w/s 7. Therefore, such an Assistant Collector Grade II is the competent authority to exercise statutory powers under the Act. He can define the limits of any estate or of any holdings, fields or other portion of any estate. (101-G, 102-D)

1.2. The revisional powers of the Financial Commissioner could not be exercised merely because the Assistant Collector Grade II has stated that the demarcation could be got verified from the Senior Revenue Officer. The revisional power of the Assistant Commissioner are circumscribed by the statutory provision. (102-E)

1.3. Rule 4 (2) (e) cannot be pressed into service in this case as these Rules have no application to the lands in Theog Forest Division. It is also not correct to contend that the respondents will have to wait to fell the trees in accordance with 10 years programme till 1999-2000. Merely because the application of the respondent was pending with the appellant, the respondents cannot be made to suffer. However, the respondents will have to conform to the order passed by the Secretary (Forests) to the Govt. of Himachal Pradesh in Order No. Fts. (A) 3-1/81-Part II, Shimla - 2, of Sept., 1984. (102-F-G)

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7062 of 1994.

From the Judgment and Order dated 30.9.92 of the Himachal Pradesh High Court in C.W.P. No. 206 of 1990.

B. Datta and N.K. Sharma for the Appellants.

Kapil Sibal, K.K. Lahiri, M.D. Adkar and Ejaz Maqbool for the Respondents.

The Judgment of the Court was delivered by

**MOHAN, J.** Leave granted.

The respondent purchased land measuring 132 bighas 15 biswas in Khasra Nos: 90/2 to 90/5 in Cudah, Pargana Pachhad, Tehsil Theog, District Shimla from private owners for the purpose of planting an apple orchard during the year 1981-82. The Government of Himachal Pradesh owns about 35 bighas in Khasra No. 90/1. The above area is surrounded by thick forests from all sides. In order to raise an apple orchard felling of trees was required in the said area. Such a felling is regulated by the provisions of Himachal Pradesh Land Preservation Act, 1978 (hereinafter referred to as the Act). This Act provides for better preservation and protection of certain portions of territories. Under Section 7 of the Act Regulations have been made. That *inter alia* provides the trees for sale shall be felled in accordance with 10 years felling programme. That programme, in turn, required to be framed by the officials of the Forest Department which is ultimately approved by the State Government. Rule 4 (2) (e) of the Himachal Pradesh Land Preservation Rules, 1983 (hereinafter referred to as the Rules) provides that no clear felling of the trees shall be allowed even for the purpose of raising orchards.

Some of the respondents made an application for demarcation of the land in question for the purposes of marking and cutting of trees. The Assistant Collector Grade II on 7th December, 1987 carried out the demarcation. On 8th January, 1988 he submitted the report with the noting

- A that the verification of the report is required to be done by Senior Land Revenue Officer. Without such a verification no action will be proper. It was further stated that in view of the intricacies in the demarcation and interest of the Government the land in question in which thousands of trees of deodar, kali, tosh, broad leaved are standing and which was fixed in dense forest and also for the purposes of exchange, private sale, compensations of trees etc. and before giving order for counting of trees, for any purpose, marking, cutting, the verification of this demarcation by Senior Land Revenue Officer with the help of Sajra Musabi in the presence of the Forest Department and also in the presence of Tehsildars who had earlier given demarcation is in the interest of Government and absolutely necessary. In view of the above observation of Assistant Collector and since
- B no test of marking of trees was done, the Forest Department for want of the above particulars could not give the felling orders.
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Thereafter on 14th December, 1989, the lands were demarcated. This was duly informed to the respondents. Since the appellants were not satisfied by the demarcation done by the Additional Collector the land was again demarcated by the Assistant Settlement Officer. He submitted a report in the first week of November, 1990. He was of the view that the felling was permissible under 10 years programme during 1999-2000. The respondents were informed of the same and were directed to approach the competent authority or to wait till the forest bid opens for the year 1999-2000.

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Under these circumstances, the respondents filed C.W.P. No. 206 of 1990 for a direction to carry out and finalise the demarcation and a further direction to issue necessary permission to cut and remove the trees. A further direction was prayed for that in case it was not possible for the State Government to grant permission it might be asked to take over the entire forest after paying the market value thereof.

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The appellants took a stand that since the report of the Assistant Collector Grade II contained so many infirmities the permission to fell the trees could not be granted. Such a permission could be granted only during 1999-2000 under the 10 years programme.

By the impugned judgment dated 30th September, 1992 the High Court allowed the writ petition holding that the report of Assistant Collector Grade II was final. Eschewing the reports of the Assistant Settlement Officer and the Additional Collector it directed the appellants to accord sanction to the respondents for clear felling of trees within a period of one month. Aggrieved by this judgment the appellants have come up in appeal.

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Before us the following contentions are raised by learned counsel for the appellants: A

The report of the Assistant Collector cannot be treated as final since under Section 17 of the Himachal Pradesh Land Revenue Act, 1973 (hereinafter referred to as Revenue Act) the Financial Commissioner has got unlimited revisional powers. Where, therefore, at his direction there were further reports of the Assistant Settlement Officer and the Additional Collector, reliance cannot be placed on the report of the Assistant Collector Grade II. B

Besides, the report of the Assistant Collector contained so many infirmities. C

In any event, Rule 4 (2) (e) prohibits felling even for the purposes of raising an orchard.

In opposing this it is submitted that the Assistant Collector Grade II had the necessary authority under Section 107 of the Revenue Act. That power is exercisable only by him and no one else. If that is the final report, the question of Financial Commissioner exercising revisional powers under Section 17 of the Revenue Act could not arise. D

Besides, the permission to fell trees had been given in several other cases. The bar of 10 years felling programme cannot be applied in this case. Right from the date of purchase these respondents have been vigorously pursuing their application for permission to fell trees. As was rightly pointed out by the High Court, having failed to secure the necessary permission sought in their application earlier, the same request was reiterated in the year 1989-90. Merely because of the pendency of that application with the appellant the 10 years programme as in 1989-90 cannot be made applicable. Such a programme must relate to 1982-83 during which year there was no bar. E F

On a careful consideration of the above, we are not in a position to differ from the High Court in relation to its finding that the report of the Assistant Collector Grade II is final. The Assistant Collector Grade II is the competent person to effect demarcation. His report is final. Section 107 of the Revenue Act reads as under: G

“107. Power of Revenue Officers of define boundaries. –  
 (1) A Revenue Officer may, for the purpose of framing any record or making any assessment under this Act or on the H

A application of any person interested, define the limits of any estate, or of any holding, field or other portion of an estate, and may, for the purpose of indicating those limits, require survey marks to be erected or repaired.

B (2) In defining the limits of any land under sub-section (1), the Revenue Officer may, cause survey-marks to be erected on any boundary already determined by, or by order of any Court, Revenue Officer or Forest Settlement Officer, or restore any survey-marks already set-up by, or by order of any Court or any such officer.”

C It is not denied before us that Assistant Collector II Grade is a Revenue Officer as defined under Section 4 (17) read with Section 7 (Classification of Revenue Officers). Therefore, such an Assistant Collector Grade II is the competent authority to exercise statutory powers under the Act. He can define the limits of any estate or of any holdings, fields or other portion of any estate.

D The revisional powers of the Financial Commissioner could not be exercised merely because the Assistant Collector Grade II has stated that the demarcation could be got verified from the Senior Revenue Officer. The revisional powers of the Financial Commissioner are circumscribed by the statutory provision.

E We are unable to accept the contention of the learned counsel for the appellants that Rule 4 (2) (e) of the Rules of 1983 will have any application to the facts of the present case. These Rules have no application to the lands in Theog Forest Division. That is why the respondents relied on the permission granted by the appellants in Balson Range for marking and felling of trees to many persons from the respective lands. Therefore Rule 4 (2) (e) cannot be pressed into service. It is also not correct to contend that the respondents will have to wait to fell the trees in accordance with 10 years programme till 1999-2000. Merely because the application of the respondent was pending with the appellant, the respondents cannot be made to suffer. However, we make it clear that the respondents will have to conform to the order passed by the Secretary (Forests) to the Govt. of Himachal Pradesh in Order No. Fts (A) 3-1/81-Part II, Shimla-2, dated the Sept., 1984. It *inter alia* states:

H “Provided also that any person felling the trees either for domestic or agricultural use or for sale shall be required to plant at least 3 trees for one tree felled. In case, however, a

fruit orchard is planted in such area, it shall be planted according to the norms laid down by the State Horticulture Department for complete stocking of the area.” A

It is open to the appellant to prescribe such conditions as are permissible under the above proviso and all other regulations/ notifications governing the issue. B

The appeal is accordingly dismissed in the above terms. However, there shall be no order as to costs.

A.G.

Appeal dismissed.

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