

GOPINDER SINGH
v.
FOREST DEPARTMENT OF HIMACHAL PRADESH AND ORS.

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AUGUST 17, 1990

[M.H. KANIA AND KULDIP SINGH, JJ.]

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Himachal Pradesh Nautor Land Rules, 1968: Rule 7(a)—Grant of nautor land to a resident having income of more than Rs.2,000 per annum—Validity of.

Clause (a) of Rule 7 of the Himachal Pradesh Nautor Land Rules, 1968 makes every resident of the estate having less than ten bighas of land or having an income of less than Rs.2,000 per annum from all sources including lands, eligible for grant of land in nautor.

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The grant of nautor land to the appellant-teacher was set aside by the Financial Commissioner in revision. The High Court dismissed the writ petition *in limine*.

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In the appeal by special leave it was contended for the appellant that the word 'or' occurring in-between the first and the second part of cl. (a) of Rule 7 has to be given its ordinary meaning and it cannot be read as 'and' that the two parts of the clause were, therefore, independent of each other and had to be read disjunctively, and that he being eligible under the first part, even though having an income of more than Rs.2,000 per annum as a teacher, the second part of cl. (a) was not attracted.

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Dismissing the appeal, the Court,

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HELD: 1. A person who has got less than 10 bighas of land but has an income of more than Rs.2,000 per annum from all sources including the said land is not eligible for allotment of nautor land under cl. (a) of Rule 7 of the Himachal Pradesh Nautor Land Rules, 1968. [800G]

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2. The object of granting nautor land under the Rules is to help poor and unprovided for residents of the State. 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 two parts cannot, therefore, 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. [800H; 801A]

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- A** 3. The appellant's income in the instant case being more than Rs.2,000 per annum he was not entitled to the grant of nautor land. [801A]

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3006 of 1981.

- B** From the Judgment and Order dated 28.7.1981 of the Himachal Pradesh High Court in C.W.P. No. 94 of 1981.

M.V. Goswami for the Appellant.

Nemo for the Respondents.

- C** The Judgment of the Court was delivered by

- D** **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.

- E** 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 Rs.552.50 as Nazarana. 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.

- F** 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:

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(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. A

(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. B

Against the order of the Financial Commissioner Gopinder Singh filed Civil Writ Petition under Article 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. C

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

“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 will be 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 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: E

(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 has laid down his life for the defence of the country shall get preference over his counterparts; F

(b) Scheduled Castes and Scheduled Tribes applicants; G

(c) The dependants of those who have laid down their lives for the defence of the country. Service for the defence of H

A 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;

B (e) Panchayats, and

(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."

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The learned counsel appearing for the appellant has relied on first part of clause (a) of Rule 7 to show that the appellant was having less than 10 bighas of land and as such as 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 Rule 7 is not attracted in his case. According to him first and the second part of clause (a) of Rule 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'.

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We have carefully examined the provisions of clause (a) of Rule 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 counsel for the appellant wants us to do it would produce absurd result. A person have 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

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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.

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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.

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P.S.S.

Appeal dismissed.