

NO.SML-LB-II(W- 243/18)/2020- 52  
Office of the Deputy Commissioner, Shimla  
District Shimla, H.P.

Dated Shimla 11, January, 2021

To

The Registrar General,  
Principal Bench, National Green Tribunal,  
New Delhi.

Sub:- O.A No. 637/2018 titled as Sher Singh V.s Govt. of Himachal Pradesh.

Sir,

The above case is pending adjudication before the Hon'ble National Green Tribunal, New Delhi and the same has been fixed for hearing on 14-01-2020. The Hon'ble National Green Tribunal had directed the undersigned vide order dated 04-08-2020 that further report in the matter be furnished before the next date.

1. That in compliance to the directions issued by the Hon'ble NGT, vide this office letter No.SML-LB-II(W-243/18)/2020-1202 dated 13-8-2020, the Ld. Divisional Commissioner Shimla and the Sub- Divisional Officer (C) Kumarsain were requested to comply with the directions issued by the Hon'ble National Green Tribunal on 4-8-2020 within stipulated period. The copy of letter No 1202 dated 13-8-2020 is annexed as **Annexure R-1**.
2. That in compliance to the directions issued by the undersigned, the Sub- Divisional Officer (C), Kumarsain vide letter No. KSN- Reader /2019 -112 dated 7-01-2020 has reported that the eviction proceedings qua the removal of the encroachment upon the above said land has been initiated against Smt Banti Devi under H.P. Public Premises Act, 1971 in case No. 42-II/17. The said case was decided on 03-08-2019 and Smt. Banti Devi and all persons in occupation of the said land/premises or any part thereof were ordered to be evicted.
3. That feeling aggrieved with the order dated 03-08-2019, Smt. Banti Devi filed an Appeal No 157-2019 before the Ld. Divisional Commissioner, Shimla and the Ld. Divisional Commissioner, Shimla has decided the said appeal on 28-9-2020. The Appellate Authority has set aside the order passed by the Collector Sub- Division , Kumarsain with the observation that the owner of the said land is Government of H.P.

and possession thereon was recorded of HPPWD, hence Nagar Panchayat Narkanda has got no title or interest on the suit land. Moreover, the Ld Collector, Settlement Shimla, Division Shimla-9 has also passed the order on 20-8-2019 in case No. 32/2019 titled as Smt. Banti Devi V/S State of H.P. and others in the case related to correction of revenue entry. In view of these observations, the case has been remanded back with the direction to the Collector, Sub- Division Kumarsain to decide the case afresh by ensuring joinder of necessary party(s), framing issues with respect to the defense and then passing a detailed, just and reasoned order after affording reasonable opportunity of being heard to all concerned as per law. The copy of order dated 28-9-2020 passed by the Ld. Divisional Commissioner, Shimla is annexed as **Annexure- R-11**.

4. That the Collector, Sub- Division Kumarsain has been directed to take further action in the matter strictly as per the directions issued by the Ld Divisional Commissioner Shimla vide order dated 28-9-2020 passed in Appeal No 157/2019 within stipulated period.

Hence, the status report is submitted for the kind perusal of the Hon'ble National Green Tribunal.

Yours faithfully,

Deputy Commissioner,  
Shimla, H.P.

Endst. No. As above:-  
Copy forwarded to:-

Dated: January, 2021

1. The Ld. Divisional Commissioner, Shimla for information please.
2. The District Attorney, H.P. Govt. Legal Cell, Himachal Bhawan Sikendra Road, New Delhi, Chanakya Puri 110001 for information and he is also requested to supply the copy of the above compliance report to the concerned, Panel Advocate for NGT.
3. The Sub-Divisional Officer (C), Kumarsain w.r.t his letter No. 112 dated 7-1-2020 with the directions to comply with the order dated 28-9-2020 passed by the Ld Divisional Commissioner Shimla in appeal No 157-2019 within stipulated period .
4. Sh. Munish Kumar (Advocate) Supreme Court of India, Panel Counsel for State of Himachal Pradesh through e-mail id i.e. manishk791@gmail.com for information please

Deputy Commissioner,  
Shimla, H.P.

Personal Attention  
Urgent National Green Tribunal Matter

NO.SML-LB-II(W- 243 /18)/2019- 1202  
Office of the Deputy Commissioner, Shimla  
District Shimla, H.P.

Dated Shimla ~~May, 2019~~ 13-08-2020

To

The Divisional Commissioner,  
Shimla- Division, Shimla-2

Sub:-

O.A No. 637/2018 titled as Sher Singh Vs. Govt. of Himachal Pradesh.

Sir,

The Consultant (Judicial) (N.G.T.) (P.B.) through e-mail dated 10-Aug, 2020 has intimated that the above case was listed before the Hon'ble National Green Tribunal on 4-8-2020 and passed the following orders:-

"1. The issue relates to alleged illegal encroachment of the Government land in forest area. On 28.09.2018, this Tribunal sought a report from the Deputy Commissioner, Shimla and the Principal Chief Conservator of Forest, Himachal Pradesh.

2. The matter was last considered on 16.05.2019 in the light of report dated 27.12.2018 from the Deputy Commissioner, Shimla to the effect that proceedings for removal of encroachment were pending. The Tribunal directed that the pending proceedings be concluded at the earliest as encroachment of public land in forest area was involved.

3. As per report dated 31.07.2020 received from Deputy Commissioner, Shimla, eviction proceedings were concluded before the 2 Sub-Divisional Officer (Civil) under the provisions of H.P. Public Premises & Land (Eviction and Rent Recovery) Act, 1971 on 3.8.2019 with the following order:

"Therefore, in exercise of the powers conferred on me by Sub-Section (1) of Section 5 of the HP Public Premises and Land (Eviction and Rent Recovery) Act, 1971, I hereby order the said Smt. Banti Devi wife of Sh. Keshav Ram Bhardwaj, resident of Ward No. 3, Nagar Panchayat Narkanda, Tehsil Kumarsain, District Shimla-H.P. and all persons who may be in occupation of the said premises or any part thereof to vacate said premises within 30 days of the date of publication of this order and will shift all materials/fixtures etc. Constructed over the land at its own cost. In the event of refusal of failure to comply with the orders within the period referred above. The Assistant Engineer, National Highway No. 5 is directed to get the said premises vacated from the respondent Smt. Banti Devi. In case any assistance is required he may approach the concerned Executive Magistrate/Police for taking necessary action. A copy of this order be sent to the petitioner as well the respondent for implementation and compliance."

4. Thereafter, eviction order has been stayed by the Divisional Commissioner, Shimla and proceedings are still pending with the Divisional Commissioner.

5. In view of the finding that there is encroachment of public land and that too in violation of the Forest Conservation Act, 1980, we find it necessary to observe that public interest requires that the pending proceedings before the Appellate Authority are expeditiously disposed of without any further delay.

A copy of this order be sent to the Additional Chief Secretary, Revenue Department, H.P. and the Divisional Commissioner, Shimla by e-mail.

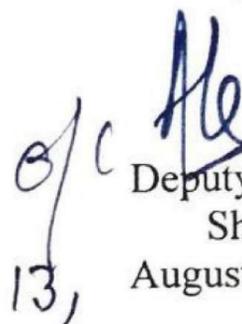
A further report in the matter be furnished by the Deputy Commissioner, Shimla before the next date by e-mail at judicial-3 ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

**List again on 14.01.2021."**

In this context, you are kindly requested to take further action accordingly so that the Hon'ble National Green Tribunal could be informed within the stipulated period. The copy of order dated 4-8-2020 passed by the Hon'ble National Green Tribunal in the above mentioned case is also enclosed herewith for your kind perusal and further necessary action please.

Encl:- Copy of order dated 4-8-2020

Yours faithfully,

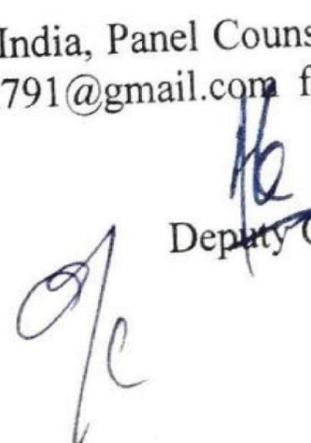
  
Deputy Commissioner,  
Shimla, H.P.  
13, August, 2020 e

Endst. No. As above:- 203-06

Dated:

Copy forwarded to:-

1. The Principal Secretary ( Revenue) to the Government of Himachal Pradesh for information please.
2. The Ld. District Attorney, H.P. Govt. Legal Cell, Himachal Bhawan Sikendra Road, New Delhi, Chanakya Puri 110001 for information please.
3. The Sub-Divisional Officer (C), Kumarsain alongwith copy of order dated 4-8-2020 passed by the Hon'ble NGT in the above mentioned case for information and necessary action so that the Hon'ble National Green Tribunal could be apprised accordingly.
4. Sh. Munish Kumar (Advocate) Supreme Court of India, Panel Counsel for State of Himachal Pradesh through e-mail id i.e. manishk791@gmail.com for information please

  
Deputy Commissioner,  
Shimla, H.P.

NO SML-LB-II(W)-243/18)/2020-2130  
Office of the Deputy Commissioner, Shimla  
District Shimla, H.P.  
Dated Shimla 27, December, 2020

The Divisional Commissioner,  
Shimla- Division, Shimla-2

Sub:-

O.A No. 637/2018 titled as Sher Singh Vs. Govt. of Himachal Pradesh.

Sir,

In continuation to this office letter No SML-LB-II ( W-243/18)/2019-1202 dated 13-8-2020 on the subject cited above.

In this context, it is requested that the above case was listed before the Hon'ble National Green Tribunal on 4-8-2020 and the Hon'ble NGT passed the following orders:-

1. The issue relates to alleged illegal encroachment of the Government land in forest area. On 28.09.2018, this Tribunal sought a report from the Deputy Commissioner, Shimla and the Principal Chief Conservator of Forest, Himachal Pradesh.

2. The matter was last considered on 16.05.2019 in the light of report dated 27.12.2018 from the Deputy Commissioner, Shimla to the effect that proceedings for removal of encroachment were pending. The Tribunal directed that the pending proceedings be concluded at the earliest as encroachment of public land in forest area was involved.

3. As per report dated 31.07.2020 received from Deputy Commissioner, Shimla, eviction proceedings were concluded before the 2 Sub-Divisional Officer (Civil) under the provisions of H.P. Public Premises & Land (Eviction and Rent Recovery) Act, 1971 on 3.8.2019 with the following order:

"Therefore, in exercise of the powers conferred on me by Sub-Section (1) of Section 5 of the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971, I hereby order the said Smt. Banti Devi wife of Sh. Keshav Ram Bhandari resident of Ward No. 3, Nagar Panchayat Narkanda, Tehsil Kumarsain, District Shimla- H.P. and all persons who may be in occupation of the said premises or any part thereof to vacate said premises within 30 days of the date of publication of this order and will shift all materials/fixtures etc. Constructed over the land at its own cost. In the event of refusal of failure to comply with the orders within the period referred above. The Assistant Engineer, National Highway No. 5 is directed to get the said premises vacated from the respondent Smt. Banti Devi. In case any assistance is required he may approach the

concerned Executive Magistrate/Police for taking necessary action. A copy of this order be sent to the petitioner as well the respondent for implementation and compliance "

4. Thereafter, eviction order has been stayed by the Divisional Commissioner, Shimla and proceedings are still pending with the Divisional Commissioner.

5. In view of the finding that there is encroachment of public land and that too in violation of the Forest Conservation Act, 1980, we find it necessary to observe that public interest requires that the pending proceedings before the Appellate Authority are expeditiously disposed of without any further delay.

A copy of this order be sent to the Additional Chief Secretary, Revenue Department, H.P. and the Divisional Commissioner, Shimla by e-mail.

A further report in the matter be furnished by the Deputy Commissioner, Shimla before the next date by e-mail at judicial- 3 ngt@gov.in preferably in the form of searchable PDF/OCR Support PDF and not in the form of Image PDF.

List again on 14.01.2021."

You are, therefore, requested to send the latest status of the case /Appeal No 157/19 titled as Banti Devi Vs State of H.P. and others immediately so that the Hon'ble National Green Tribunal could be accordingly informed within the stipulated period.

Yours faithfully,

  
Deputy Commissioner,  
Shimla, H.P.

Endst. No. As above:- 2131-33

Dated: 29, December, 2020

Copy forwarded to:-

1. The Additional Chief Secretary ( Revenue) to the Government of Himachal Pradesh for information please.
2. The Ld. District Attorney, H.P. Govt. Legal Cell, Himachal Bhawan Sikendra Road, New Delhi, Chanakya Puri 110001 for information please.
3. The Sub-Divisional Officer (C), Kumarsain with the directions to send the latest status of the above case alongwith relevant record within three days so that Hon'ble NGT could be apprised accordingly.

  
Deputy Commissioner,  
Shimla, H.P.

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In the Court of Divisional Commissioner, Shimla Division, Shimla  
171 002, Himachal Pradesh.

Appeal No.  
157/2019

Date of Institution  
16-08-2019

Date of Decision.  
28-09-2020

Smt. Banti Devi W/o Sh. Keshav Ram R/o Ward No. 3, Nagar Panchayat,  
Narkanda, Tehsil Kumarsain, District Shimla (HP) through GPA Holder Sh.  
Rupesh.

.....Appellant

Versus

Nagar Panchayat, Narkanda, Tehsil Kumarsain, District Shimla (HP) through  
its Secretary.

.....Respondent.

Appeal under section 9 of H.P. Public Premises & Land  
(Eviction and Rent Recovery) Act 1971 against the order  
dated 03-08-2019 passed by Ld. Collector, Sub Division,  
Kumarsain, District Shimla (HP) in case No. 42-2/2017.

**COUNSELS:**

For the Appellant: Sh. Mohinder Verma, Advocate.

For the Respondent: Sh. Hari Kapoor, Secretary, Nagar Panchayat  
Narkanda.

**ORDER**

1. This order shall dispose of the present appeal preferred by Smt. Banti Devi W/o Sh. Keshav Ram R/o Ward No. 3, Nagar Panchayat, Narkanda, Tehsil Kumarsain, District Shimla (HP) through GPA Holder Sh. Rupesh (hereinafter referred to as the appellant) against the order dated 03-08-2019 passed by Ld. Collector, Sub Division, Kumarsain, District Shimla (HP) (hereinafter referred to as the Ld. Court below) in case No. 42-2/2017 under section 9 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 (hereinafter referred to as the Act).



*[Handwritten signature]*

2. Brief facts of the case are that a case No. 42-2/2017 was initially instituted before Ld. Collector, Sub Division Rampur under Sections 4 & 5 of the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act, 1971 but subsequently on creation of new Sub Division at Kumarsain, it was transferred to Collector, Sub Division Kumarsain vide interlocutory order passed on 17-07-2017 for initiating further proceeding as the suit land was situated within the jurisdiction of said newly created Sub Division. Notice under Section 4 (1) of the Act was issued on 09-12-2016 and was properly served upon the appellant. Vide said Notice the appellant was called upon to show causes for making unauthorized encroachment on Government land comprised in Khasra No. (413/1), measuring 162-50 Sq. meters situated in revenue estate Narkanda, Tehsil Kumarsain on or before 03-01-2017 either in person or through authorized representative failing which an order of eviction shall be made. The appellant did not appear on 03-01-2017 despite of proper service and hence was proceeded ex-parte. The appellant filed application for setting aside ex-parte order dated 03-01-2017, but Ld. Collector, Sub Division Rampur did not decide the ex-parte issue, however, passed an order for fresh demarcation of encroached land. Afterwards, the proceeding commenced before Ld. Collector, Sub Division Kumarsain where the appellant through her General Power of Attorney and her Advocate filed a detailed reply. Ld. Collector, Sub Division Kumarsain after hearing arguments put forward by the parties, going through the record of the case and taking into consideration the statement of Smt. Banti Devi came to the conclusion that present appellant Smt. Banti Devi failed to produce any documentary proof to establish her title over suit land, as such she was held to be in unauthorized occupation

of suit property whereupon RCC structure as well as parking was raised without having any right, title and interest of any kind on suit land. Therefore, the order of eviction was passed on 03-08-2019 under Section 5 of the Act to vacate the said premises within a period of 30 days of the date of publication of the order *ibid* with the directions to shift all materials/ fixtures etc constructed over the suit land at its own cost. In the event of refusal, the Assistant Engineer, National Highway No-5 was directed to get the said premises vacated.

3. Feeling aggrieved of the said order passed by Ld. Court below, the appellant preferred the present appeal on the following grounds:

- (i) That the order of the Ld. Court below is illegal, wrong, without jurisdiction, hence the same is required to be set aside.
- (ii) That Ld. Collector below has initiated proceedings against the present appellant with the allegation that she had encroached upon the Government land comprised in Khasra No. 413/1 which is recorded in the name of HPPWD. The present appellant was served with show cause Notice in respect to said land. A detailed reply to Show Cause Notice was submitted by the present appellant before Ld. Court below whereby it was specifically pointed out that the respondent has no locus standi to file case in respect to said land as the same was recorded in the name of PWD. Therefore, the proceeding initiated against the present appellant is not maintainable being based on wrong revenue entries. →
- (iii) That the present appellant is permanent resident of village Narkanda and is having landed property abutting to Khasra No. 413. The construction was raised in the year 1980 in which all the essential amenities were sanctioned by the competent authority after completing all codel formalities. The land of the appellant has never been demarcated by the respondent and the proceeding has been initiated merely on the basis of presumption. The area of revenue village Narkanda was under settlement during said proceeding. The record was not prepared correctly and hence the present appellant has preferred an application before Ld. Settlement Officer, Shimla for correction of revenue entries.
- (iv) That the Ld. Court below had not dealt proceeding as per law. No issues were framed despite of filing application by the present appellant in this regard. The present appellant had also not been heard properly and has been condemned unheard. The present respondent had moved application for the withdrawal of proceeding with the submission that they have no right, title or

interest in the present matter as the suit land was recorded in the name of PWD. Ld. Court below dismissed the said application vide order dated 24-07-2019 with the observation that this application cannot be allowed at this stage. The next date was not informed to parties as the zimni order dated 24-07-2019 was written at their back. In Zimni order dated 24-07-2019 case was shown to be adjourned for 01-08-2019 for leading evidence on behalf of present respondent. Ld. Court below issued Notice for 01-08-2019 on which day entire family was out of station with respect to medical checkup. None was present at home as per report of process server.

(v) That on 01-08-2019, the case was taken up and the present appellant was proceeded ex-parte illegally and wrongly ignoring the report of process server. On 01-08-2019 witnesses were examined and the case was fixed for 02-08-2019 for arguments. Arguments were heard and case was fixed for 03-08-2019 for order. Ld. Court below did not pass any order on application filed by the present appellant for setting aside ex-parte order though the reference of filing application was recorded in the Zimni order. The conduct of the Ld. Court below shows that the proceeding was initiated in a biased manner.

(vi) That as per order dated 03-08-2019, the present appellant was held an encroacher on land comprised in Khasra No. 413/1, 413/2 and 831/1. Whereas the present appellant was served by the Ld. Court below for making encroachment only on Khasra No. 413/1. It is strange as to how it was concluded that Khasra No. 413/2 and 831/1 were also occupied unauthorisedly. The present appellant has not occupied any land unauthorisedly which belongs to Nagar Panchayat Narkanda, Tehsil Kumarsain, District Shimla.

(vii) That there was no evidence on the part of respondent to prove that the present appellant has encroached upon the land of respondent. The demarcation of Field Kanungo has never been proved in accordance with law and the demarcation was never conducted in the presence of appellant. Merely exhibiting of document does not prove the same. Ld. Court below has thus committed various illegalities and irregularities in the present matter. The present respondent has failed to explain as to why the concerned Kanungo was not examined who has alleged that the land in question was demarcated on the spot, though there is no proof of legal demarcation. Therefore it has been prayed to allow the present appeal and case be remanded back to Ld. Collector with the specific directions to frame the issue with respect to the defense and also give the proper opportunity in the interest of justice and fair play.

4. Notices were issued to the parties. The record of the Ld. Court below was requisitioned. The arguments put forward by the Ld. Counsels for

the parties were heard at length. The Ld. Counsel for the appellant largely relied upon the grounds of appeal and argued that Nagar Panchayat Narkanda is not the owner of land in question and hence, was having no locus-standi to file the case before Ld. Court below. As per revenue entry, the suit land belongs to HP PWD which was not arrayed as necessary party. It was further argued that a case for correction of revenue entry was also under trial before Ld. Collector (Settlement) Shimla in respect of the suit land which stands decided in favour of the present appellant and the mutation of the land also stands attested in her favour. Therefore, it was prayed that the present appeal may be allowed and the case may be remanded back to Ld. Collector Sub Division Kumarsain for deciding it afresh after impleading HP PWD as necessary party. Whereas representative appeared on behalf of Nagar Panchayat Narkanda admitted the fact that the suit land does not belong to Nagar Panchayat Narkanda, rather it belongs to PWD (NH) It was thus prayed to implead the PWD as necessary party in the instant case.

5. Case file of Ld. Court below was perused. It reveals that a petition/ complaint was filed by Nagar Panchayat Narkanda through its Secretary initially before Ld. Collector Sub Division Rampur on 21-10-2015 under Section 4 & 5 of the Act contending thereby that the present appellant had encroached upon the Government land comprised in Khasra No. 413/1 measuring 162-50 sq. meter situated in revenue estate Narkanda. The present appellant had constructed shop thereupon unlawfully. It was thus prayed that unauthorized possession of the present appellant may be ordered to be evicted from Khasra No. 413/1.

Commissioner  
2015

6. On the basis of said petition, case No. 42-2/2017 was registered before Ld. Collector, Sub Division Rampur under Sections 4 & 5 of the Act. Notice was issued on 09-12-2016 by Ld. Collector as per requirement of provisions contained under Section 4 (1) of the Act thereby calling upon Smt. Banti Devi to show causes for encroaching upon the Government land comprised in Khasra No. 413/1, measuring 162-50 Sq. meters unauthorizedly on or before 03-01-2017 either in person or through an authorized representative failing which she will be proceeded against. On 03-01-2017, the appellant was not present despite proper service of Notice and hence was proceeded ex-parte. On said date, a joint representation was also presented to Ld. Collector with the prayer that re-demarcation needs to be ordered. The prayer made was allowed and it was ordered to get fresh report from field agency. Ld. Collector Sub Division Rampur did not receive report from field agency till 17-07-2017 on which day the case was ordered to be transferred to newly created Sub Division, Kumarsain.

7. Ld. Collector Sub Division Kumarsain took up the case first time on 11-01-2019 on which day case was adjourned for filing reply to petition by present appellant for 22-01-2019. On 22-01-2019, the present appellant filed reply vide which it was primarily contended that the Nagar Panchayat Narkanda has no locus-standi to file the present petition as it had got no right, interest or title upon the land in question. It was asserted further that the suit land was situated abutting to the land of present appellant and their boundaries were common on spot. No proper demarcation was conducted by competent revenue officer and hence, case filed by the Nagar Panchayat Narkanda had lost legal sanctity. Asserted further that the



construction of present appellant was quite old and hence cannot be held unlawful. It was also pointed out in preliminary objections that an application had been filed by present appellant before Ld. Collector (Settlement) Shimla under Section 38 of the H.P. Land Revenue Act for the correction of revenue entries of the suit land and hence, the present proceedings need to be kept in abeyance till the final adjudication of correction case by Ld. Collector (Settlement) Shimla. Copy of reply was delivered to present respondent to file rejoinder, if any.

8. Present respondent filed rejoinder on 04-02-2019 which was taken on record. It was contested thereby that the Nagar Panchayat Narkanda was competent and authorized to initiate such proceeding in view of the fact that land is shown to have been transferred to Nagar Panchayat Narkanda as per order of Financial Commissioner to the Govt. of H.P. Since Nagar Panchayat Narkanda is recorded in the possession of land in revenue record and the ownership of the land is in the name of State Government, as such it was within its statutory rights to file such complaint/ petition for initiating eviction proceeding against encroacher. In regard to issue of demarcation, it was contested that land in question was demarcated by the Field Kanungo Kotgarh way back in the year November, 2013 and the demarcation conducted had never been challenged till date. The demarcation so conducted was well within the knowledge of present appellant as she was present on the day on which the demarcation was carried out on spot.

9. Further perusal of case file reveals that the present appellant had filed an application under Section 10 of CPC for staying the proceeding pending for adjudication in view of the fact that a case for



correction of revenue entries was under trial before Ld. Collector (Settlement) Shimla and if the correction is allowed in said case, the case of Nagar Panchayat Narkanda filed against her shall have no maintainability. Therefore, it was prayed to stay the proceeding till the final decision in correction case failing which it would cause prejudice to the interest of present appellant in case it is found in correction proceeding that the property in question belongs to her. In reply to said application, Nagar Panchayat Narkanda contested that provisions of Section 10 CPC were not applicable in the instant matter. Such provisions of Section ibid are applicable only in Civil Courts. Moreover, had any such application been filed for correction before Collector (Settlement) Shimla, the present appellant would have procured stay order for staying the eviction proceeding. Ld. Collector took up the application for consideration on 19-03-2019 on which day same was dismissed with the observation that application for the correction of revenue entries was filed after initiating the eviction proceeding.

10. An application to implead HPPWD as party in the proceeding and also to direct Tehsildar/ Naib Tehsildar to demarcate the land in question was also filed before Ld. Court below. This application was taken up for consideration on 11-04-2019 on which day the Case was fixed for 16-04-2019 for filing reply to said application. Finally it was decided on 24-07-2019 on which day arguments of the parties were heard on said application and also on application filed by Smt. Banti Devi for staying the proceedings in this case. It was ordered that the applications filed cannot be allowed at this stage of the case and hence, both the applications were not allowed.

Commissioner

11. Further perusal of case file reveals that an application was also filed on 24-07-2019 with the prayer that Nagar Panchayat Narkanda had passed a resolution No. 418 on 29-05-2019 resolving thereby that the disputed land does not belong to Nagar Panchayat and as such Nagar Panchayat should be allowed to refrain from eviction proceeding. In view of said resolution, it was prayed to allow the complainant i.e. Nagar Panchayat Narkanda to withdraw from eviction proceeding in the interest of justice. The application was taken up for consideration and for order on 24-07-2019 and was not allowed.

12. During the pendency of the case/ appeal before this Court the present appellant has brought on record the copy of decision passed by Ld. Collector (Settlement), Shimla in correction case No. 32/2019 on 20-08-2019 alongwith copy of Mutation No. 238 of revenue estate NAC Narkanda attested on 23-09-2019 by A.C. IInd Grade, Kumarsain in pursuant to said correction order. It reveals from the perusal of the order dated 20-08-2019 that the present appellant Smt. Bant Devi has got ownership out the land comprised in Khasra No. 413 denoted by Khasra No. 413/1 measuring 45-75 Sq. Mtr. The said order of correction also stands implemented by attesting Mutation No. 238. Moreover, a letter dated 13-08-2020 has also been received from Ld. Deputy Commissioner, Shimla together with a copy of order dated 04-08-2020 passed in OA No. 637/2018 by Hon'ble National Green Tribunal, New Delhi with the prayer to adjudicate present appeal filed against eviction order dated 03-08-2019 of Ld. Collector Sub Division Kumarsain so that status report could be filed before National Green Tribunal well before next date of hearing on 14-01-2021. The copy of letter together with its enclosures have been allowed to be placed on case file of this Court.

13. In view of discussion above, it is manifest that the petition was filed by Nagar Panchayat Narkanda through its Secretary before Ld. Court below which was registered initially before Ld. Collector Sub Division Rampur. However, the case was subsequently transferred to Ld. Collector, Sub Division Kumarsain for further proceedings. Nagar Panchayat Narkanda was in fact having no title or interest on suit land as the owner of the land was State of H.P. and possession thereon was recorded of PWD. It is for this reason that the present appellant contended the issue of locus standi before Ld. Court below. Moreover, during the course of proceeding before Ld. Court below, Nagar Panchayat Narkanda has taken different stand. It, vide rejoinder filed, has taken the plea of transferring of title of suit land in its favour by Government as such having statutory right to file petition/ complaint. However, in subsequent proceedings, it has desired to refrain from the proceedings in view of having no valid title over the suit land. Afterwards, when an application for arraying PWD as necessary party in the proceeding was filed before Ld. Court below under relevant provision of statute, the same was not allowed vide order dated 24-07-2019. I am of the considered opinion that this action on the part of Ld. Court below was erroneous. Since PWD was recorded in the possession of the suit land, as such it was having valid and statutory title over the suit land. The application filed for arraying PWD as necessary party should have been considered and allowed to pass a legal order. Ld. Court below failed to do so, as a result of which order passed on 03-08-2019 by Ld. Collector Sub Division Kumarsain is suffering from this infirmity and thus the same does not sustain in the eyes of law. Moreover, Ld. Collector (Settlement), Shimla Division, Shimla-9 has passed an order dated

Commissioner  
mla-2 \*

20-08-2019 in case No. 32/2019 titled Smt. Banti Devi Vs State of Himachal Pradesh on the matter of correction of revenue entry. Thus agreeing with the arguments/ assertions put forward by the Ld Counsel for the appellant and also in view of the order of correction passed by Ld. Collector(Settlement) Shimla on 20-08-2019 in case No 32/2019, the appeal filed is allowed and the order dated 03-08-2019 passed in case No. 42-II/2017 is set aside and the case is remanded back to Ld. Collector, Sub Division Kumarsain with the directions to decide the case afresh by ensuring joinder of necessary party(s), framing the issues with respect to the defense and then passing a detailed, just and reasoned order after affording reasonable opportunity of being heard to all concerned as per law Miscellaneous application(s), if any, shall stand disposed of accordingly .

A Copy of this order be placed on the case file of the Ld. Court below and entire record be returned to Lower Court and further a copy of the order be also sent to Ld. Deputy Commissioner, Shimla with reference to his letter dated 13-08-2020 for filing status of the case before Hon'ble National Green Tribunal, New Delhi

The case file of this court be consigned to Record Room after due completion.

**Announced.**

  
( G. K. Srivastva ) IAS  
Commissioner,  
Shimla Division, Shimla-2.

Registered

Endst. No. Pb/20-458

Dated: 30/09/2020

Copy of order dated 28-09-2020 passed in case No. 157/2019 by Ld. Divisional Commissioner, Shimla Division. Shimla-02 is forwarded to following for information and necessary action:-

1. The Deputy Commissioner, Shimla with reference to his office letter No. NO.SML-LB-II(W-243/18)/2019-1202 dated 13-08-2020.
2. The Sub Divisional Collector (SDM ) Kumarsain, District Shimla, H.P. together with their office case file No. 42-II/17 containing 282 pages.

to SDM  
SDM  
09/10/2020

Blap

Naib Tehsildar (Peshi) to  
Divisional Commissioner,  
Shimla Division, Shimla-2.  
Ph. No. 0177-2623759.