

## Chapter 13

# PREVENTION OF ENCROACHMENTS ON GOVERNMENT LANDS

### Responsibility of Revenue Officials to detect encroachments

**13.1** At the time of crop inspections or other wise the patwari shall detect all encroachments on government lands in his jurisdiction and prepare a case for ejection against the encroacher. He will be held responsible if any encroachment remains undetected during crops inspection or otherwise in his circle. The Field kanungo and the Revenue Officers shall be responsible for detection of any encroachment on government lands found during checking of crop inspections in their tours. They shall also be duty-bound to detect encroachments on government lands in their respective jurisdictions.

### Section 30 of Act No. 3 of 1984

**13.2** Under Section 30 of the H.P. Prevention of Specific Corrupt Practices Act, 1983, the revenue officials are required to detect all encroachments on Govt. land, otherwise they are liable for punishment. Section 30 is reproduced below:-

“Whoever—

- (i) being an officer of the Forest Department duty bound to prevent an encroachment over the reserved and demarcated protected forest land; or
- (ii) being a revenue officer duty bound to prevent any encroachment over land belonging to the government; or
- (iii) being an officer of the Municipal Corporation, Notified Area Committee or Municipal Committee duty bound to prevent encroachment over the land belonging to these bodies.,

intentionally or knowingly permits, connives, abets or suffers on account of his commission to detect or report an encroachment in areas, within his jurisdiction shall be punished with imprisonment of either description which shall not be less than one year but which can be extended to three years and shall also be liable to fine;

Provided that the court may, for any special reason to be recorded in writing impose a sentence of imprisonment of less than one year.”

### Prevention of encroachments on Govt lands under Section 163 of the H.P. Land Revenue Act, 1954

**13.3** The case of encroachments on govt. lands are decided by the Revenue Officer under section 163 of the Himachal Pradesh Land Revenue Act 1954 as amended in 1989 is reproduced below:-

“(1) Where Government land or land which has been reserved for the site of a village or for the common purpose of the co-sharers therein has been encroached upon by any co-sharer or other person for any purpose including construction of a building or other structure thereon-then-

(a) The Revenue Officer may of his own motion or on application of any other co-sharer eject the encroaching person (hereinafter in this section referred to as the encroacher) from such land and by order, proclaimed in the manner mentioned in Section 23, prohibit repetition of the encroachment therein,

Provided that no encroacher shall be ejected under this clause unless he has been given a reasonable opportunity of showing cause against the ejection.

(b) the Revenue Officer may, having regard to such principles of assessment of damages as may be prescribed, assess the damages on account of such encroachment and may, by order, require the encroacher to pay the damages within such period, and in such instalments as may be specified in the order:

(c) if the encroacher has erected any building or other structure or has grown crops or planted trees on the encroached land it shall be competent for the Revenue Officer, while ordering his ejection to dismantle such building or other structure and confiscate any produce or any other material on such land and put the same in public auction and deposit the sale proceeds thereof into the Government Treasury; and

(d) the Revenue Officer, may impose upon the encroacher a fine upto one thousand rupee per bigha or part thereof in the case of first encroachment and, where the encroachment is repeated, a fine upto two thousand rupees per bigha or part thereof for each such subsequent encroachment.

(2) Any amount payable as damages under clause (b) of sub-section (1) or as fine under clause (d) of that sub-section may be recovered in the same manner as arrears of land revenue.

(3) When there is a question as to title or to the adverse possession, wherein the possession is claimed by an encroacher for a period beyond thirty years in relation to the land from which ejection is made or is to be made under this section, the Revenue Officer, not below the rank of an Assistant Collector of the First Grade, shall proceed to determine the question as if he were a civil court and shall exercise all such powers as are exercisable by a civil court.

For the determination of the question under sub-section (3), the Revenue Officer shall follow the same procedure as is applicable to the trial of an original suit by a civil court and he shall record a judgment and decree containing the particulars required by the Code of Civil Procedure, 1908 to be specified therein.

An appeal from the decree of the Revenue Officer made under Sub-section (4) shall lie to the District Judge as if that decree were a decree of a subordinate judge in an original suit.

A further appeal from the appellate decree of a District Judge upon an appeal under sub-section (5), shall lie to the High Court only if the High Court is satisfied that a substantial question of law is involved; and

No suit or other legal proceeding shall lie against the Revenue Officer or any person acting under this section in respect of anything in good faith done or purchased to have been done under the provisions thereof or the rules made thereunder.

*Explanation:* For the purpose of this section, any person who holds land under a lease granted by the Government for a fixed term and continues to be in possession of the land beyond the expire of the period of lease shall be deemed to be an encroacher unless such person gets the lease extended or renewed.

The encroacher on Govt. land can be ejected by a Revenue Officer after giving notice in suo moto proceedings (1985 S.L.J. 28)

**13.4** For the purpose of section 163 'land' has been defined under Explanation 2 of section 5 (2) of the Act as follows:-

**Definition of  
'land' for the  
purpose of sec-  
tion 163**

"For the purpose of this section, and section 163 land means land of all types (including forest land, ghasni land, cultivable or uncultivable waste land and khadater land) whether assessed to land revenue or not, used or likely to be used for any purposes whether agricultural or otherwise and includes:-

a) any building, whether constructed or under construction and part thereof and (b) the garden, ground and out-houses if any, appurtenant to such building or part thereof."

From the definition of land for the purpose of this section it is clear that an encroachment on all types of government lands including buildings, etc. can be removed by a Revenue Officer.

**Exclusion of jurisdiction of Civil Courts**

**13.5** Under clauses (xxv) and (xxvi) of sub-section (2) of section 171 of the H.P. Land Revenue Act, the jurisdiction of civil courts in the matters regarding any question, as to any land or any right to, or title or interest in the land which is an encroached land or in relation to which any person aims that it was vested or is deemed to have been vested in him and that he cannot be ejected there from under sub-section 5 (1) of section 163 and in any matter regarding the ejection of any person under section 163 or the recovery of damages or fine payable under sub-section (1) of that section, has been excluded.

**Powers under Sub-section (3) of Section 163 to Ac Ist Grade**

**13.6** The powers under sub-section (3) of section 163 to determine the question, as if he were a civil court have been conferred on a Revenue Officer not below the rank of AC Ist Grade. Hence, Naib-Tehsildar exercising the powers of AC IInd Grade cannot exercise these powers. He shall at once refer such encroachment cases where question of title or adverse possession are involved, to Tehsildar exercising the powers of AC Ist grade.

**Preliminary enquiry when there is a question as to title or to the adverse possession.**

**13.7** If during the course of ejection proceedings under this section an objection is raised by the encroacher that there is a question as to title or to the adverse possession, the Revenue Officer cannot ignore such objection. He shall make preliminary enquiry and if he comes to the conclusion that such a question is really involved, then only he shall proceed to determine the question, under sub-section (3) of section 163 as if he were a civil court. If during preliminary enquiry he finds that no such question is involved he shall eject the encroacher from such land after following the prescribed procedure.

*Mere raising of question of title or adverse possession does not make incumbent upon the Revenue Officer to accept it as he has to ascertain and determine whether such a question is involved or not.*

**Eviction under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971**

**13.8** The Govt. land falls within the definition of 'Public Premises' as defined under section 2 (e) of the Act. The encroachments on govt lands can be removed under section 5 of the H.P. Public Premises Land and (Eviction and Rent Recovery) Act, 1971 by the Collector. All SDO (c) in H.P. have been vested with the powers of the Collector under the Act vide H.P. Govt. Notification No. 1-21/72-LSG, dated 30th June, 1972. They should adhere to the provisions of this Act for the removal of encroachments on govt lands being more effective.

**H.P. Financial Commissioner's instructions regarding removal of encroachments**

**13.9** The Financial Commissioner (Rev.) H.P. has issued instructions regarding removal of encroachments on Govt. lands vide letter No. Rev. 2F (8)-1/80-Vol-III, dated 13 March 1990 wherein it has been made clear that recourse may preferably be had to the provisions contained in the H.P. Public Premises and land (Eviction and Rent Recovery) Act for the removal of encroachments on Govt. land than under section 163 of the H.P. Land Revenue Act, 1954, as the former Act provides for a better, more efficacious and expeditious and more reasonable remedy in the matter of removal of encroachment on Public Premises. Moreover, the jurisdiction of the civil court is barred to entertain any suit or proceedings in respect of eviction of any person who is in unauthorised occupation of any public premises. The Revenue Officers/Officials should adhere to the above instructions of the Financial Commissioner (Revenue) for speedy removal of encroachments on Govt. lands.

**Removal of encroachments under the H.P. Road Side Land Control Act: 1969**

**13.10** The encroachment on government lands found within the acquired width and which is a part of controlled area of a scheduled road as declared under section 3 of the H.P. Road Side Land Control Act, 1968, can be removed under Section 12 (2) of the said Act by the Collector. All the SDO (C) and all the Land Acquisition Officers, PWD have been empowered as Collector under the above Act. The removal of encroachments of such nature under the provisions of this Act is speedy and expeditious and the jurisdiction of civil court is barred. So the case of encroachments of such nature should be dealt with under the Act *ibid*

**Prevention of encroachments on Govt. lands during settlement and regularisation of old encroachments**

**13.11** Generally the old encroachments on Govt. lands are regularised during settlement operations by the executive instructions of the Govt. It is the general tendency on the part of the public to encroach Government lands during settlement in order to take benefit of such regularisation. Every official of the Settlement Department right from patwari to the settlement officer is responsible under the law to detect and remove all fresh encroachments on Govt. lands, which are done during settlement operations.

The patwari shall prepare an encroachment case of fresh encroachment against the encroacher immediately on occurrence.

For speedy removal of encroachments, the Revenue Officer (Settlement Naib-Tehsildar/Tehsildar) shall refer such cases to the Collector under the H.P. Public Premises and Land (Eviction and Rent Recovery) Act, 1971 and Collector under the H.P. Land Road Side Control act, 1968 as the case may be for eviction. Old encroachments cases detected during settlement shall be decided by the Settlement Officer in accordance with the policy/orders of the Government or the special rules framed for this purpose, if any.

**Application of Provisions of C.P.C.**

**13.12** The Revenue Officer shall follow the procedure prescribed in C.P.C. for proceedings under sub-section (3) of Section 163 *supra*. He shall frame issues, record judgment and pass decree.

**Form of Show Cause Notice**

**13.13** When the encroacher does not claim any question of title or adverse possession, the Revenue officer shall pass ejection order after giving a reasonable opportunity of showing cause against the ejection.

**Show-Cause Notice**

**13.14** The Revenue Officer shall issue a show-cause notice to the encroacher in the following form:-

**Notice under Section 163 of the H.P. Land Revenue Act, 1954**

Before \_\_\_\_\_ AC Ist grade \_\_\_\_\_ Tehsil \_\_\_\_\_ District \_\_\_\_\_ H.P.  
State Vs Shri \_\_\_\_\_ R/O village \_\_\_\_\_ Tehsil \_\_\_\_\_ district \_\_\_\_\_ H.P.

To

Shri \_\_\_\_\_ R/O village \_\_\_\_\_ Tehsil \_\_\_\_\_ District \_\_\_\_\_ H.P.

Whereas it has been reported to me or it has come to my knowledge that you have encroached upon Govt. land Khasra No. \_\_\_\_\_ measuring \_\_\_\_\_ situated in village \_\_\_\_\_ Tehsil \_\_\_\_\_ Distt. \_\_\_\_\_ H.P. (tatima attached/drawn overleaf) and whereas the said encroachment on Govt. land is illegal under section 163, H.P. Land Revenue Act, 1954.

Now, therefore, you are required to show cause as to why you should not be ejected from the said

encroached land, fined and required to pay damages under Section 163 of the Act, in this office on the \_\_\_\_\_ day of 19\_\_\_\_\_.

Given under the hand and seal of this office on day of \_\_\_\_\_ 19.

AC Ist Grade

**Warrant of  
ejectment**

**13.15** After hearing the encroacher, if the Revenue Officer passes an ejectment order, he shall issue a warrant of ejectment for the execution of the order to the Field Kanungo in the following form:

**Warrant of ejectment under Section 163 of the H.P. Land Revenue Act, 1954**

Before \_\_\_\_\_ AC Ist grade. Tehsil \_\_\_\_\_ District \_\_\_\_\_  
State Vs Shri \_\_\_\_\_ R/O village \_\_\_\_\_ Teh. \_\_\_\_\_  
Distt. \_\_\_\_\_ H.P.  
Case No. \_\_\_\_\_ of \_\_\_\_\_ 19.

To

The Field Kanungo

Circle \_\_\_\_\_ Tehsil \_\_\_\_\_ District \_\_\_\_\_  
Whereas Shri \_\_\_\_\_ R/O Village \_\_\_\_\_ Tehsil \_\_\_\_\_  
District \_\_\_\_\_ H.P. has encroached upon government land Kh. No.  
measuring \_\_\_\_\_ in \_\_\_\_\_ estate Hadbast  
No. \_\_\_\_\_ Tehsil \_\_\_\_\_ Distt. \_\_\_\_\_ Himachal Pradesh.

Whereas the said encroachment is illegal on Govt. land and whereas the order of ejectment has been passed against the said encroacher on \_\_\_\_\_

Now, therefore, you are hereby ordered to eject Shri \_\_\_\_\_ encroacher from the encroached land Kh. No. \_\_\_\_\_ measuring \_\_\_\_\_ in estate \_\_\_\_\_ (The tatima of encroached land is attached).

You are further required to prohibit repetition of the encroachment by the proclamation in the manner prescribed under section 23 of the H.P. Land Revenue Act, 1954. In case the said encroacher has erected any building or other structure or has grown crop or planted trees, you are ordered to dismantle such building or other structure on such land and confiscate any produce or other material on such land and put the same in public auction and deposit the sale proceeds thereof into the Govt. treasury.

You are further commanded to return this warrant on or before the \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_ with an endorsement certifying the date on which and the manner in which it has been executed or the reason why it has not been executed.

Given under my hand and seal of this office this day of \_\_\_\_\_ 19 \_\_\_\_\_.

AC Ist Grade

**Enforcement of order of the ejectment**

**13.16** The Field Kanungo shall enforce the warrant of ejectment in the manner prescribed under rule 43 of Punjab land Revenue Rules applicable to Himachal Pradesh. Rule 43 reads as under:-

“(i) Order of ejectment from, and delivery of possession of immovable property shall be enforced in the manner provided in the Code of Civil Procedure for the time being in force in respect of the execution of a decree whereby a civil court has adjudged ejectment from or delivery of possession of such property.

(ii) And in the enforcing of these orders a Revenue Officer shall have all the powers in regard to contempts, resistance and the like which a civil court may exercise in the execution of a decree of the description mentioned in subsection (i)”

**Resistance of execution**

**13.17** Section 74 of Civil Procedure Code deals with the resistance of execution, which is reproduced below:

“74—Where the court is satisfied that the holder of a decree for the possession of immovable property or that the purchaser of immovable property sold in execution of a decree has been resisted or obstructed in obtaining possession of the property by the judgment debtor or some person on his behalf and that such resistance or obstruction was without any just cause, the court may, at the instance of the decree holder or purchaser, order the judgment debtor or such other person to be detained in the civil prison for a term which may extend to thirty days and may further direct that the decree holder or purchaser be put into possession of the property.”

**Assistance from Public Works Department for dismantling buildings or any other structure**

**13.18** The Revenue Officer can requisition the services of P.W.D. labour/Machinery for the ejectment of an encroacher from any building or any other structure raised on any Govt. land. It shall be the duty of the concerned Executive Engineer/Sub-Divisional Officer, PWD to provide necessary labour/machinery on requisition immediately, without any payment in the public interest.

**Police help and funds for dismantling**

**13.19** In case the Field Kanungo wants police help for ejectment, the Revenue Officer shall cause to provide the required help. If funds are required to dismantle any building or any structure, the same shall be provided from the contingency funds by the Collector of the District.

**Execution of Warrant of ejectment by Field Kanungo within 3 months**

**13.20** The Field Kanungo shall execute the warrant of ejectment within a period of 3 months from the date of receipt from the Tehsil Office.

**Register of Warrant of ejectment to be maintained by Field Kanungo**

**13.21** The Field Kanungo shall enter all the warrants of ejectments issued by the Tehsil Revenue Officer in the register to be maintained by him in the following form:

1	2	3	4	5	6	7
Sr.	Details of warrant of ejectment	Date of issue of warrant from the Tehsil office	Date of receipt by F.K.	Date of return of warrant to the Tehsil Office	(Reasons for pending, if any, beyond 3 months)	Revenue

**Submission of return by Field Kanungo**

**13.22** The Field Kanungo shall submit a return of warrants of ejections received and executed by him after every month regularly to the Tehsil Office. The Tehsildar shall examine the return and shall see the progress of each warrant and ensure that the execution takes place in time. The statement of return shall be in the form prescribed for the register of warrant prescribed in para 13.21 above.

**Recovery of damages and fine**

**13.23** The Revenue Officer shall ensure that any amount payable as damages and fine under Section 163 of H.P. L.R. Act is recovered in the manner provided under sub-section (2) of section 163. i.e. as an arrear of land revenue.

The amount should be recovered within a period of three months and deposited into the Govt. treasury.

**Govt. Instructions**

**13.24** All Executive instructions issued by the Govt. regarding encroachments on Govt. lands from time to time shall be followed by the Revenue Officers meticulously.