

make maximum holding of an oustees upto 10 bighas per family. In case, the purely Gharaties oustees may not like allotment of land in the area available for their resettlement, they will be allotted 10 bighas of land for Gharats and residential purpose, if available.

10. Non-agriculturists oustees will be allotted 10 biswas of land per family for construction of houses.
11. Applications of the category (e) and (g) above will be considered for allotment of land on availability of land.
12. Ousteas will be eligible for allotment of land any where in Himachal Pradesh.
13. Grant of land will be on payment of charges mentioned in H.P. Nautor Rules, 1965.
14. The Deputy Commissioner, Mandi shall be competent to grant land to the oustees up to the maximum limit prescribed above and the land Acquisition Officer, Mandi upto 5 bighas for family.
15. An appeal from an order of the Land Acquisition Officer shall lie to the Deputy Commissioner Mandi and second appeal to the Commissioner. There will be no third appeal.
16. In the cases of grant of land more than 5 bighas sanctioned by the Deputy Commissioner Mandi the first appeal shall lie to the Commissioner, and second to the Financial Commissioner provided that there shall be no appeal against the order of the Commissioner, confirming in appeal the order of the Deputy Commissioner.
17. The period of limitation for appeal shall be the same as provided for Nautor cases under rule 29 of H.P. Nautor Rules.

Removal of Encroachments

**No. Rev. 2F(8)-1/80-Vol. III
Government of Himachal Pradesh
Department of Revenue**

From

The F.C.-cum-Secretary (Revenue)
to the Govt. of Himachal Pradesh.

To

All the Deputy Commissioners in
Himachal Pradesh.

Dated Shimla-171002, the 13 March, 1990.

Subject:- Removal of encroachments.

Sir,

I am directed to state that the matter regarding the removal of encroachments has been engaging the attention of the Government for sometime.

As you are aware, right now, proceedings for the removal of encroachments on Government land can be initiated under more than one set of laws. Action to remove an encroachment on the acquired width of a scheduled road can be taken by a Collector under the Himachal Pradesh Road Side Land Control Act. Similarly, a Collector is empowered to hold proceedings for the eviction of an unauthorised occupant from public premises under the Himachal Pradesh Public Premises and Lands (Eviction and Rent Recovery) Act. Besides this, steps to remove an encroachment from Government land can also be taken under section 163 of the Himachal Pradesh Land Revenue Act.

The provisions of the Himachal Pradesh Road Side Land Control Act are designed to meet emergency situations where very prompt action is called for in order to remove an encroachment on the acquired width of a scheduled road so as to ensure free flow of traffic and a reasonable possibility of making use of the whole acquired width of the road whenever the need for that arises in future. The extent of the inconvenience that may result from an encroachment on a public road calls for urgent remedial measures. These are adequately provided for under the Himachal Pradesh Road Side Land Control Act and can be made use of with advantage.

Although the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act and section 163 of the Himachal Pradesh Land Revenue Act also apply to the land from which an encroachment can be removed under the Himachal Pradesh Road Side Land Control Act, the ambit of action under the Himachal Pradesh Road Side Land Control Act is very restricted and narrow and the other two acts operate in a much wider field. In regard to the land not covered by the Himachal Pradesh Road Side Land Control Act, action can be initiated under either of these legislative enactments. In the past, difficulties were experienced in regard to proceedings u/s 163 aforesaid. With a view to removing these difficulties, this provision was amended last year (1989) so as to empower a Revenue Officer not lower than Assistant Collector of the first grade in rank to convert himself into a Civil Court for deciding a question as to title or to adverse possession. However, an appeal against the order of an Assistant Collector functioning as a Civil Court in terms of this law now lies to a District Judge. Till the dispute as to title or adverse possession is finally adjudicated upon, proceedings to eject an encroacher on Government land cannot be carried to their logical conclusion. This would tend to make proceeding under this legal provision rather protracted. Besides, action under provision can be taken by an Assistant Collector with a provision for scrutiny of his order or proceedings on appeal or in revision by the Collector, the Commissioner, and the Financial Commissioner. These successive stages of scrutiny by higher Revenue Officers ensure against arbitrary action but these also makes for dilatoriness. Thirdly, section 163 aforesaid does not lay down a very satisfactory remedy against the repetition of an encroachment. Fourthly, the precise nature of the proceedings under this section is still in the realm of uncertainty and lacks in much desired clarity. On the other hand, proceedings under the Himachal Pradesh Public Premises and Land (Eviction and Rent Recovery) Act can be held only by a Senior Officer called Collector. This itself guarantees against arbitrary action. Secondly, the latter Act provides for only one remedy of appeal against the order of the Collector thereby minimising delay. Thirdly, the rules of procedure embodied in this Act and the rules made under it are very detailed, elaborate and almost exhaustive. They normally leave no scope for abuse of authority or arbitrariness and ensure adequate opportunity to an unauthorised occupant before he is turned out of the public premises. Fourthly, the procedure prescribed in this Act gives reasonable time to the unauthorised occupant at very stage in the career of the proceedings against him to show cause against the action proposed or to vacate the public premises voluntarily or to remove his property of his own accord before recourse can be had to the use of force against him. Fifthly, section 15 of this Act bars the jurisdiction of Civil Courts in matters which can be dealt with under the Act. Similarly, Section 10 of this Act confers finality on orders passed by a Collector or Commissioner under this Act and further enjoins that their orders shall not be called in question in any suit or proceedings and no injunction shall be granted by a Court or any authority in respect of any action taken or to be taken in pursuance of any power conferred under this Act. These provisions clearly, pre-empt any interference by Civil Courts by ousting their jurisdiction. Of course, judicial review by the Supreme Court and the High Court has not been barred. It has been held by the Punjab and the Haryana High Court in Union of India V/s Atul Kuthiala (1984 PLJ 204) that the Estate Officer under the Central Public Premises Act is competent to record a finding on the question as to title between the parties and that such finding can be called in question only in appeal under the Act. It was clarified that a suit is not competent. This authority is equally applicable to proceedings before a Collector under the Himachal Pradesh Public Premises and Lands (Eviction and Rent Recovery) Act, because the relevant provisions of these Acts are pari materia. Therefore, the provisions of the Himachal Pradesh Public Premises and Lands (Eviction and Rent Recovery) Act ensure a fair adjudication of a dispute, provide reasonable time and opportunity to an un-authorised occupant to vacate the public premises, to remove his property therefrom or to pay up the arrears of rent or damages for use and occupation of the public premises. This Act also lays down an efficacious and expeditious remedy thereby enabling removal of an encroachment from the public premises within a reasonable time-frame. Further, unlike section 163 of the Himachal Pradesh Land Revenue Act, section 11 of the Himachal Pradesh Public Premises declares occupation of the public premises by a person, who had earlier been evicted therefrom, to be an offence punishable with imprisonment which may extent to one year or with fine or with both. This provision further lays down that a Magistrate convicting a person on the charge of unauthorised occupation of public premises may make an order for evicting that person summarily. This provision would have a deterrent effect. Besides all this, Section 16 of this Act protects the State Government, the Commissioner and the Collector against a suit, prosecution or other legal proceedings in respect of any act which is done in pursuance of this Act or any rules or order made thereunder.

Thus, it would appear on a detailed comparison of the schemes of section 163 of the Himachal Pradesh Land Revenue Act and the Himachal Pradesh Public Premises and Lands (Eviction and Rent Recovery) Act that the latter provides for a better, more efficacious and expeditious and a more reasonable remedy in the matter of removal of encroachments on public premises. It is, therefore appropriate that, where action to remove an encroachment can be taken under either of these laws, recourse may preferably be had to the provisions contained in the Himachal Pradesh Public Premises and Lands (Eviction and Rent Recovery) Act.

You are requested to bring this decision to the notice of all the Collectors and Assistant Collectors in your district for guidance and appropriate action in future.

Yours faithfully,

Sd/-
F.C.-cum-Secretary (Revenue)
to the Govt. of Himachal Pradesh.

Endst. No. Rev.2F(8)-1/80-Vol.III, Dated the 13 March, 1990.

A copy of this letter is forwarded to the Divisional Commissioners, Shimla/Mandi/Kangra at Dharamshala for information.

Sd/-
Deputy Secretary (Revenue) to the
Government of Himachal Pradesh.

No. Rev. D(F) 6-6/86
Government of Himachal Pradesh,
Revenue Department.

Dated Shimla-171002, the 4th October, 1986.

From

The Financial Commissioner (Revenue) to the Govt. of Himachal Pradesh Shimla-2.

To

1. The Divisional Commissioners,
Shimla, Kangra and Mandi Division, H.P.
2. All the Deputy commissioners in Himachal Pradesh.
3. The Settlement officer,
Shimla & Kinnaur District at Shimla and
Kangra District at Dharmashala, H.P.
4. The Director of Land Records,
Himachal Pradesh Shimla-2
5. All the Sub-Divisional Officers (Civil) in Himachal Pradesh.
6. All the Tehsildar in Himachal Pradesh.

Subject :- Instructions dealing with encroachment or disputes as to boundaries.

Sir,

I am directed to forward herewith a copy of the instructions of the Financial Commissioner (Revenue) to the Government of Himachal Pradesh, for the guidance of Revenue Officers and Field Kanungos on the subject cited above. These should be followed strictly by all concerned.