

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.

Yours faithfully,

Sd/-

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

Instructions for the guidance of revenue Officers and Field Kanungos dealing with encroachment or disputes as to boundaries.

With a view to ensuring uniformity of practice and correctness, the Financial Commissioner Himachal Pradesh is pleased to issue the following instructions for the guidance of Revenue Officers and Field Kanungeos for the purpose of delimitation of the boundaries cases under the provisions of Section 107 of the said Act:-

1. If a boundary is in dispute, the Revenue Officers or the field Kanungo should relay it from the Village map prepared at the last settlement. If there is a map which has been made on triangulation system. (Musalas bandi) he should find three fixed recognisable points on different sides of the place in dispute as near to it as he can, which are shown in the map. These points should be such as admitted by the parties that have remained undisturbed since the last settlement.

2. If the parties cannot agree on any such fixed recognizable points, then the Revenue Officer/ Field Kanungo will find such points themselves with the help of the field map and chaining on the spot which they find undisturbed since the last settlement.

3. They, then will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. If the distance when thus compared agrees in all cases, he can then draw lines joining these three points in pencil on the map and draw perpendiculars with the scale from these lines to each of the points which it is required to lay out on the ground. He will then lay them out with the cross staff as before and test the work by seeing whether the distance from one of his marks to another is the same as in the map. If there is only a small dispute as to the boundary between two fields, the greater part of which is undisturbed, then such perpendiculars as may be required to points on the boundaries of these fields as shown in the field map can be set out from their diagonals, as in the field book and in the map, and curves made as shown in the map.

4. (a) If three fixed points are not available and only two fixed recognizable points are available, a third point may be found out with the help of these two points so as to form a triangle. It should be seen that the sides of such a triangle when checked on the spot tally with the distances given between these points in the map. Then the land be demarcated by this procedure as laid down in instruction III above.

4. (b) The two adjoining fields may have a common inter looking boundary line. If other dimensions (Karu Kan) of these fields also tally on measurements the 2 points of this line can be treated as two points referred to in instruction IV above.

5. There can arise cases where even two fixed recognizable points are not available and only one point is admitted by the parties as fixed or found out by the Revenue Officer/Field Kanungo. Such points are generally the ones where corners of two or more fields meet. The reliability of such a point can be tested by measuring the sides of the fields adjoining or surrounding the point. If the measurements of such fields tally with the map then the accuracy of such a point itself gets established. Such a point may be fixed as a starting point for demarcation.

6. The main purpose in following procedure in the foregoing instructions is to test the accuracy of the points on the map of the last settlement for which the relevant instructions are contained in appendix-XXI of the Punjab Settlement Manual as applicable in Himachal Pradesh. The relevant extract is reproduced as below :-

" A few fields too should be checked by their sides being measured. The correctness of a map is much more certainly determined by means of checking corners of fields and other fixed recognisable points then by merely seeing whether the cuttings of the diagonals are at the same distances as

at settlement. While testing accuracy of existing map by lines (farzi water), discrepancies upto 2 per cent may be neglected."

7. In demarcation of Land comprising Khasra numbers that have undergone amendment due to changes due to causes such as by partitions, transfer of fractions of fields or new Khasra numbers that came into existence by acquisition of Land by Nautor it should be ensured that the field maps (Patwari copy and Maumi copy) have been amended and updated in accordance with the provisions of Para 4.30 & 4.31 of H.P. Land Records Manual. The demarcation should be given on the basis of such amended maps.

8. If there is a map which has been made on the square system the Revenue Officer or the Field Kanungo should reconstruct the square in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map the position and distance of those points from line of a square and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map.

9. In the report to be prepared/submitted by the Revenue Officer/Field Kanungo, it must be explained in detail how he made his measurement. He should submit a copy of the relevant portion of the last settlement field map (Musavi) or "Momi" (Tehsil copy of settlement map) of the village showing the fields with their dimensions (Karu-Kan) of which he took measurement as mentioned in instructions supra and the boundary in dispute. There should also be a mention in this report as to what method was adopted and the way he fixed the starting points and the fields he measured and the result of such measurement. All the fields and points measured should be shown in the site plan (Naksha Mauka) within the frame of copy of musavi.

10. If a question is raised as to the position of the disputed boundary according to the field map of the settlement preceding the current settlement, that also should be demarcated on the ground so far as this may be possible and also shown in the copy of the current field map to be submitted under instruction No. IX.

11. On the same site plan (Naksha Mauka) should be shown also the limits of the existing possession.

12. The areas of the fields abutting on the boundary in dispute as recorded at the time of last settlement and those arrived at as a result of the measurement on the spot should be mentioned in the Revenue Officer's or the Field Kanungo's report with an explanation of the cause of increase or decrease if any discovered.

13. When taking his measurement the Revenue Officer or Field Kanungo should explain to the parties what he is doing and should enquire from them whether they wish anything further to be done to elucidate the matter in dispute. At the end he should record the statements of all the parties to the effect that they have seen and understood the measurements, they have no objection to make to this (or if they have any objection, he should record it together with his own opinion) and that they do not wish to have anything further done on the spot. It constantly happens that when the report comes before the Revenue Officer or the Civil Court, one or other parties impugns the correctness of the measurement and asserts that one thing or another was left undone. This raises difficulties which the above procedure is designed to prevent.

14. No local commissioner shall be appointed by the Revenue Officers in cases instituted with them under section 10 of the H.P. Land Revenue Act.

These instructions will also be followed by the Revenue Officers/Field Kanungos whenever they are appointed as Commissioners by a Civil Court in suits involving disputed boundaries.