

**H.P. BOARD OF DEPARTMENTAL EXAMINATIONS**  
**DEPARTMENTAL EXAMINATION FOR IAS/ HAS OFFICERS OF HIMACHAL**  
**PRADESH SESSION APRIL, 2010**

**PAPER-5**

**REVENUE CASE**

**Time Allowed:3 Hours.**  
**100**

**Maximum Marks:**

**Note:-**

- 1. All questions carry equal marks.**
- 2. Credit will be given for citing updated relevant provisions of Law/ Rules.**
- 3. Only Bare Act/ Rules are allowed to be consulted.**

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Q.No.1 a) Sh.Subhash Chand S/O Kesru Ram S/o Molku, R/O Village Sargheen, Tehsil Shimla (Rural) applied for partitioning of land bearing Khata number 41/136 Kita 14 measuring 085.43 hectares in mauza up Mohal Dochi, Mohal Saghreen, Tehsil and District Shimla stating in the application that the Applicant was joint owner in the land in question with S/Shri Shonkia S/o Molku , Manohar Lal S/o Kesru R/O Village Sargheen S/shri Gian Chand and Krishan Chand both sons of Smt.Jagri Devi R/o Village Junga, Sub Tehsil Junga, District Shimla. Resident Shonkia resisted the application on the Grounds of question of title, partial partition and applicant not in possession of The land in question. In report of partial partition he pointed out that the parties To the application were also jointd owner in possession of the land in question. In report of partial partition he pointed out that the parties to the application Were also joint owner in possession of another Khata in the same village and The applicant failed to included their land also in the application and question Its maintainability. The respondent also pointed out that in fact Molku was real Owner of the land. After his death, the land in question was inherited by his Three sons S/ Shri Anokhi Ram, Kesroo and one daughter Jagri. S/Shri Anokhi Ram, Kesru and Jagri had died and only the present reposndent Shonkia was Survng legal heir of Molku. Shri Anokhi Ram was the real brother of the Replying respondent and after the death of Anokhi Ram, Smt. Amkoo alias Niranjnu had inherited the property from late Anokhi Ram. Anokhi Ram and Late Amkoo died issueless and the land in question owned and possessed by Amkoo had to be inherited by the replying respondent Shonika being class-II Legal heir. According to replying respondent, applicant as well as other Respondents in connivance with revenue staff got the mutation attested in their Favour dated 8-8-2005 through not having legal right to inherit the property of The late Amkoo alias Niranjnu and as such question of title was involved. The Mutation in question was also stated to be pending appeal before Ld. Sub Div. Collector and asserted question of title.

The applicant in rejoinder denied the claim of the respondent and asserted in Entries to be true and being co- owner of the property asserted his right to seek Partitioning the share. The applicant also pointed out in rejoinder that the Respondent were in possession of the best portion of the land and as such they Were not interested for partition. The applicant was also ready to partition the Entire land belonging to the co sharers in the same revenue village.

Based upon the above pleading and facts, answer the following questions

Supported with reasons:

- (i) How does the Assistant Collector Ist Grade proceeds in such cases?
  - (ii) Whether points at dispute are cognizable by civil count or the court in question?
  - (iii) Based upon the facts of the case, write a detailed and well reasoned order.
- (b) Ld. AC Ist Grade in the first instance formulated mode of partition which was Assailed in appeal by the respondent Shonkia on grounds of non- consideration Of objections and speaking orders by Ld. AC-I Grade. Ld. Collector sets a side The ordered of AC Ist Grade and reminded the case for fresh consideration and Decision. How does Revenue Officer proceed in such matter and also write Well reasoned order by Ld. AC Ist Grade.

Q.No.2 The kailash District Cooperative Marketing and Consumers Federation Ltd, Dhalli Shimla-12 through its Secretary moved an application seeking eviction Of M/S G.D. Khanna and sons, 6 Commercial Building, The Mall Road Shimla-171001 through its proprietor under HP Public Premises and Land (Eviction and Rent Recovery) Act, 1971 from Set No.6 as aforesaid. It is stated In the application that the federation is a registered society and its Secretary Is competent and authorized to file and maintain the application for which the Directors of the Society had authorized him through resolution. The application Further states that the respondent was licence in the aforesaid set at a monthly Licence fee of Rs. 227.10 P inclusive of municipal taxes and the said premises Being used by the respondent and the premises in question consisting of five Storeys. The applicant cancelled the licence of occupation in respect of the Respondent through registered notice dated 20-04-1988 which was responded By the respondent and the respondent was given sufficient time to arrange for The accommodation though not required under law. The respondent, as per applicant was required to vacate the premises by the end of 31-5-88 but having failed to vacate the premises by the stated date is liable to be evicted in terms of the act ibid and the respondent and its agent had no right to remain in the premises. Further the application states that the applicant had been getting Rs. 15,000/- per month as licence fee from M/S Ahuja Plasters who were running Restaurant in set No-5 and occupying lesser area than the respondent and thus The respondent was also liable to pay damages for use and occupation of the Premises @ Rs. 15,000/- per month w.e.f. 1-6- 1988 to the applicant owner. It Is also stated that the premises in question was situated within Municipal Corporation limits and the Collector being competent authority having

Jurisdiction to adjudicate on the matter. The applicant prayed, thus for the Eviction of the respondent from the premises in question beside payment Rs. 15,000/- p.m. w.e.f. 1-6-1988 onward as damages for use and occupation to the Applicant till eviction of the respondent.

The respondent contested the application besides denying knowledge about Authorization of the Secretary for filing and maintaining the present application. It asserted that M/S G.D. Khanna and S.N. Khanna who were tenant in set No-6 As aforesaid on annual rent of Rs. 2725/- which was inclusive of municipal taxes. The premises in question comprised of five storeys. The business was being run On the top floor only and besides that ground floor and first floor were used as Godowns. Rest of the storeys were used as residence, by Shri P.N. Khanna and Shri S.N.Khanna who were, brothers by relations. Further in the same premises, As per respondent residing Miss Swaran Khanna, Mrs. Nirmal and Miss Sahi Khanna who were sisters. The respondent admitted that the applicant were Owner and the applicant was co- operative society but contended that by mis Representation of facts the premises was got converted within preview of HP Public Premises Act, and thus guilty of fraudulent mis- representations and is Estopped from seeking of the respondents. The respondents alleged that the Applicant mis represented the facts above so that he would be able to enhance its Enhance its business activity and be able to come out of the red. The respondent Contended that by giving the premises on rent to M/S Ahuja Plastic for running Restaurant for a consideration of Rs.15,000/- p.m. unheard of in locality. The Malafied intention as per replying respondent was also visible from the fact that The said society gave an advertisement in the leading newspapers with its Intentions to sell the buildings and invited sealed tendered from the public at Large. The respondent sent Rs.60,000/- as Bank Draft representing earnest Money and offered purchase for the amount of Rs.4.00 lacs. Keeping in view, the Fact that the entire property had been rented out on annual rent of Rs. 2725/- The Applicant, according to the respondent turned downed the draft of Rs. 60.00/- And returned to the respondent. The respondent wrote to the applicant afterwards To know the reserve price but the applicant never replied. The respondent, in View of its pleadings termed the contents of the cancellation of licence of Occupation as in correct and misleading and asserted that by excepting the rent, The alleged cancellation of licence of occupation automatically stood revoked. The notice dated 20-04 1998 stood abated as the applicant had changed its mind By accepting the respondent as tenant after having giving notice. The respondent As per him could not be ordered to vacate to having abated. The respondent Asserted that they had already paid rent up to 31<sup>st</sup> march 1990 and further Remitted the amount up to 31-03-1992 through cheque. The respondent also Jurisdiction of the Court to try the matter and asserted that in Shimla (Urban) Rent Control Act was applicable. The applicant also raised the issue of non joinder The of the necessary prties for the reasons that M/S G.D.Khanna and sons was Not the properties concern. It comprised two parteners namely S/Shri P.N. Khanna and S.N. Khanna and further more the part of premises was also in Occupation of other members of the family.

In rejoinder, the applicant reiterated its claim. It asserted that the respondent was Licence was licence and who so ever was in occupation was unauthorized Occupant. The plea of the respondent that the cancellation of the licence was Revoked on account of alleged acceptance of rent subsequently was also denied. The applicant also asserted that being registered society the premises in question is Covered under H.P. Public Premises and Land (Eviction) and Rent (Recovery) Act, 1971. The plea of the sending Bank Draft and offering of Rs.4,00,000/- as sale Price besides asking for reserve price were also termed as irrelevant and content of The application were reiterated. Both parties led evidence subsequently and during Arguments retreated there stands.

Based upon the above pleading and facts answer the following question:

- (i) How does the Collector proceeds in such matter and draft necessary notice as per Application;
- (ii) Write well reasoned detailed order in view of the above mentioned pleadings and Facts.

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