

**Board of Departmental Examinations for Tehsildars/ Naib- Tehsildars.  
August, 2006**

**Paper No.-6 Revenue Case.**

**Time:3 Hours.**

**Max. Marks: 100**

**Note:**

- 1. Attempt all questions. Answer may be written either in English or Hindi.**
- 2. Only bare acts can be consulted.**
- 3. Credit will be given for quoting relevant provisions of law.**

**Q.No-1 Patwari Halqua Janedghat, Sub Tehsil Junga, Tehsil Shimla Rural, Distt Shimla has made a report through Field Kanungo to Assistant Collector II Grade, Sub Tehsil Junga, that one Shri Ami Chand S/O Shri Jaisi Ram, Resident of Katola has encroached upon the Govt. land bearing Khasra No. 348/173/4/1 measuring 0-1 biswa situated at Chak katola, Pargana Jai, Up Tehsil Junga, Distt. Shimla by erecting illegally one storeyed Gair- Mumkin Dhara (Annexure 'A' Page 1 to 3). The reply, statement of the encroacher and report of the Field Kanungo is at (Annexure 'B' Page 5 to 9).**

On the basis of the above facts answer the following:-

- (1) Prepare and issue a Show Cause Notice to the encroacher. (10)
- (2) Pass an appropriate Order in this case as per the provisions of the relevant Law. (15)

**Q.No-2 The land comprised in khasra No. 150 situated in Paonta Sahib town of District Sirmour measuring 1-1 bighas was recorded in the ownership and Possession of one Shri Santokh Singh and his brother prior of kharif 1975. The entire land in this khasra Number had been classified as "GAIRMUMKIN ABADI". During kharif 1975, one Shri Shiv Shankar, S/O Shri Daya Ram, R/O Paonta Sahib was entered as non- occupancy tenant over the land described above To the extent of 0-10 biswa.**

At the time of attestation of mutation, Shri Santokh Singh, the owner Of the land, challenged the correctness of the revenue entries vide his application Dated 7-5-1975 stating that the entires of non occupancy tenancy were made Behind his back against his interest since he had never agreed to create tenancy Over the land. The land was stated by him to be under abuilttup structure at Paonta Sahib, a town in Sirmour District. A two room set was stated to have been Rented out to the Respondent Shri Shiv Shankar by the applicant Shri Santokh Singh and other co- sharer sometimes in the year 1975 at the monthly rent of Rs. 150/- .The alteration of revenue entries in respect of 10 biswa of land under dispute was alleged to have been made by the respondent Shri Shiv Shankar in Collusion with Patwari, Paonta Sahib on the basis of possession of the rented Accamodation comprising two rooms referred to above alongwith the compound

Inform of the building. In short, the plea of the applicant Shri Santokh Singh was That in view of the dispute raised by him regarding the entries of the land, the Ld A.C-II Grade, Paonta Sahib had no jurisdiction to confer proprietary rights on Shri Shiv Shankar under Section 104 of the H.P. Tenancy and Land Reforms Act, 1972. Unless the Land Reforms Officer as an Assistant Collector –I Grade had decided the dispute under sub-section (4) of Section 104 of the H.P. Land Reforms Act, 1972.

#### AVERMENTS, EVIDENCE AND ARGUMENTS OF THE PARTIES.

The applicant Shri Santokh Singh produced copy of “Khasra Gardawari” Pertaining to the period prior to kharif 1975 ( Mark ‘X’) according to which the Applicant and his brothers are recorded as owners in possession of the land Comprising khasra No.150,measuring 1-1 bigha. The classification of the whole Land is “ Gairmumkin Abadi”. He also produced the copy of “ khasra gardari”, Kharif 1975, Mark ‘X’ whereby the respondent Shri Shiv Shankar has been Inducted as a non- occupancy tenant over 0-10 biswa on the disputed land in lieu Of payment of actual land revenue amounting to 0-10 paisa. The applicant also Produced two witnesses, AW 1 and AW 2,who stated that the disputed land was a Builtup structure has a two room set rented out to Shri Shiv Shankar by the Applicant in 1975 on rent basis and that no tenancy of land on payment of land Revenue had been created by the applicant in favour of the respondent since the Land was not agricultural land on account of its location in a commercially busy Town, Paonta Sahib.

The respondent Sshri Shiv Shankar examined himself as a witness (SW 1) and Exhibited the copies of “ Khasra Gardawari” for the years 1975 to 1977, Mark ‘X’ Stating that he had santokh Singh during Kharif 1975 and hence his submission is That under section104 (3) of the H.P. Tenancy and land Reforms Act, 1972 all Rights,title and interests of the landowners Shri Santokh Singh stood extinguished From Kharif 1975, i.e., the date of creation of tenancy since the tenancy in this Case had been created after the commencement of the provisions of the H.P. Tenancy and land Reforms Act, 1972.

At the time of argument, the applicant Shri Santokh Singh

Pointed out that prior to kharif 1975 the entire land comprised in the disputed Khasra No. 150 was classified as “ Gairmumkin Abadi”. It was during kharif 1975 that classification of 0-10 biswa of the land was changed in collusion with the patwari Paonta Sahib to give undue benefit to the respondent. The applicant highlighted during arguments the clear cut contradiction in the entries made by the Patwari I Column. No.II

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and Column No 8 of the “ Khasra Gardwari”. Out of 1-1 biswa have been kept unchanged. Column No 8 of the “Khasra Gardwari” gives break up of the classification as “ Gairmumkin Dak Ghar” 0-6 biswa, “ GAIRMUMKIN NAGICHA” 0-8 biswa and “ GAIRMIMKIN ABADI” 0-7 biswa. Though the respondent Shri Shiv Shankar has been recorded as non- occupancy tenant over the land to the extent of 0-10 biswa in khasra No. 150, is not made clear, as to over what part of the land classified “ Gairmimkin Dak Ghar”, “ Gairmimlin Bagicha” and “ Gairmumkin Abadi” the respondent was recorded as non- occupancy tenant. In other words, the entries do not clarify whether the respondent is a non- occupancy tenant over “ Gairmumkin Dak Ghar” or “ Gairmumkin Abadi” or Gairmumkin Bagicha”. It is the case of the applicant that the entries of khasra Gardwari” from kharif 1975 till Rabi 1977 do not indicate how and on what basis the nature of the land was changed from kharif 1975 from “Gairmumkin Abadi” to “ Bagicha” particularly in view of the fact that the land is situated in Paonta town where front of the building for all the intents and purposes is a part is a part of the builtup structure premises and hence creation of non-occupancy tenancy over builtup structure is out of question. The applicant also pointed out that it is only 0-8 biswa of land which has been classified as “BAGICHA”and that in the subsequent crops, i.e. rabi 76, kharif”. As per the copy of the “ Khasra Gardwari” there existed orchard over 0-8 biswa of land only during one crop. The plea of the applicant is that in a town where land is put to commercial use, he could not have raised an orchard over 0-8 biswa for creating non-occupancy tenancy for receiving ten paise (actual land revenue) as rent.

The applicant also discussed in short the procedure to be followed while making alteration in the revenue record arguing that it is only undisputed acquisition of interests that are to be recorded by the Patwari without entering them in the muttation register whereas in case of disputed interests, Patwari is required to enter interests in the register of mutation. The applicant, the owner orally or in writing to create tenancy in favour of the respondent who has been given on monthly rent a two room set which is situated on the disputed land.

The argument of the respondent Shri Shiv Shankar is that the burden of providing that tenancy was not created is on the landowner and that the landowner has brought nothing substantial on record to prove that he is not a tenant of the disputed land in view of which the entries of tenancy incorporated in his favour during kharif 1975 cannot be changed now since his possession, hence, entries as non- occupancy tenant over factual position on the spot.

In rebuttal, the averments made on behalf of the applicant Shri Santokh Singh are that since the applicant had never agreed to the creation of tenancy, the Patwari, Paonta Sahib on his own could not change “ Gardwari” entries behind his back, that change of non- occupancy tenancy recorded by the Patwari during kharif 1975, not duly attested by the A.C.-II Grade, has no validity

**in the eyes of the law and that during the year 1975, Patwari had no authority to change “ Gardwari” . The applicant produced in his support copy of instructions issued by the Financial Commissioner, Himachal Pradesh providing that Patwari shall write on the register of “ Khasra Gardwari” changes detected during crop inspection in pencil and put them up for attestation to a Revenue Officer after whose attestation the entries shall be made in ink. Solitary entry made against the aforesaid provisions by a Patwari according to the applicant was wrong and illegal and hence requires to be corrected to bring the record in accordance with the established fact that by no stretch of imagination can occupation of a house and the compound in front in front of it given on monthly rent tent amount to creation of non- occupancy tenancy over such premises in the absence of consent/ agreement of the landowner.**

**On the basis of the above facts, averments, evidence and arguments of the parties answer the following questions:-**

- (i) Put yourself in the position of A.C.-II Grade, Paonta Sahib before whom the dispute referred to above regarding wrong induction of respondent as non- occupancy tenant has been raised during the attestation of mutation and decide the issue whether or not you can decide the case by way of a mutation order and confer proprietary rights on the non- occupancy tenant Sh. Shiv Shankar giving reasons and full justification in support of your decision.**

**( 25)**

- (ii) Frame issues and decide the dispute raised regarding the correctness of entries of non- occupancy tenant made in the revenue record in your capacity as an Assistant Collector of the First Grade.**

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