

HP Board of Departmental Examination

DEPARTMENTAL EXAMINATION FOR IAS/HAS OFFICERS OF H.P.

PAPER NO. 5 REVENUE CASE

Time Allowed: 3 hours

Maximum Marks: 100

Note:

- 1. Attempt ALL Questions**
- 2. HP Land Revenue Act/Rules and HP Land Records Manual are allowed**

QUESTION NUMBER: I

Consider the following:

1. Assistant Collector Ist Grade started proceedings against Mr Sadhu Ram under Section 163 of the HP Land Revenue Act (called Act for short) for encroaching upon Government Land comprised in Khasra No. 190/179/1 measuring 0-13 bighas and Khasra No. 190/179/2 measuring 0-9 bighas (total 1-2 bighas) situated in Muhal A, Tehsil Arki, District Solan, H.P. on the basis of report prepared by the Field Kanungo and Patwari concerned.
2. After considering the field report; revenue record; hearing the parties and examining revenue staff and two independent witnesses- Pradhan and Up Pradhan of the Gram Panchayat, Ld. Assistant Collector 1st Grade came to the conclusion that the government land was indeed encroached upon by Mr Sadhu Ram and therefore he passed an order on 18.11.1993 and ordered that Mr Sadhu Ram be evicted from the said land under section 163 of the Act and he also imposed a fine of Rs. 2,000/- upon him.
3. Mr Sadhu Ram appealed against this Order before Ld. Collector, Sub Division, Arki with the plea that he was constructing his house on his own land and that he had not encroached upon government land. The Collector Sub Division decided the case on 13.01.1994 with the direction to Ld. Assistant Collector 1st Grade, Arki to get the land demarcated by a Revenue Officer so that the fact regarding encroachment was established properly.

4. In pursuance to this direction Ld. Assistant Collector 1st Grade, Arki directed the Naib Tehsildar, Arki to demarcate the land. Summons was issued to Mr Sadhu Ram and he was asked to be present on the spot on 5.2.1996 but he did not appear on the spot. Proceedings continued before the Naib Tehsildar Arki and Mr Sadhu Ram was duly served once again to be present on the spot for demarcation on 2.11.1996. On the said date he was again not present on the spot. Instead, his wife appeared before the Naib Tehsildar and said that her husband was on duty and she did not want to get the demarcation done in his absence. The Naib Tehsildar sent the report accordingly to the Tehsildar stating that ~~that~~ Mr Sadhu Ram was avoiding the demarcation deliberately and that he was not present on spot despite proper service. He also recorded the statement of his wife who was present on spot.
5. Tehsildar, Arki considered the report of the Naib Tehsildar and concluded that Mr Sadhu Ram was wilfully avoiding the demarcation and since he was served properly he started ex parte proceedings against Mr Sadhu Ram. After considering the evidence on the case file he held that the Mr Sadhu Ram had encroached upon the government land and he ordered his ejection from the land in question. This order was passed on 5.3.1997.
6. When the Field Kanungo went on the spot in the month of April 1997 to execute the warrant of ejection Mr Sadhu Ram said that the Collector, Sub Division had ordered that demarcation should be carried out by a Revenue Officer and that he would not allow the ejection proceedings to take place as the Revenue Officer had not demarcated the land in question. He also produced a copy of the order passed by the Collector, Sub Division, Arki. The Field Kanungo reported the matter to the Tehsildar Arki accordingly. Thereafter, there was no order case file till May, 2005. File was never put up before the Tehsildar and/or Naib Tehsildar during this period. Then the file was placed for Orders before the Revenue Officer (Tehsildar Arki) on June 10, 2005, who after going through the file Ordered that warrant of ejection issued on 5.3.1997 be executed and case be taken to a logical conclusion.

7. Mr Sadhu Ram filed an appeal before the Collector, Sub Division, Arki in July 2005 challenging the ex-parte Order passed on 5.3.1997 with the prayer to set aside the ex-parte order and also to quash the ejectment order. He filed the appeal on following grounds: he was not aware of the order passed by Tehsildar Arki on 5.3.1997 as it was passed behind his back; he filed the appeal in the year 2005 from the date of knowledge; there was no demarcation by the Revenue Officer as had been ordered by the Collector, Sub Division.
8. Advocate for Mr Sadhu Ram argued that the ex-parte order has been passed by Ld. Assistant Collector 1st Grade, Arki without affording him an opportunity of being heard. He further stated that he came to know about this order only in June 2005. He prayed that the delay be condoned and the impugned order be set aside. Advocate appearing for the State of H.P. argued that appeal was hopelessly time barred and that the record of proceeding before Ld. Assistant Collector 1st Grade Arki clearly showed that Mr Sadhu Ram deliberately avoided the proceedings before the Assistant Collector 1st Grade Arki. He argued that the Order was passed rightly as per the Act and therefore there was no need to set aside the order and the warrant of ejectment passed by the Id AC Ist Grade after considering the facts of the case and on the basis of the available evidence which was sufficient to conclude that Mr Sadhu Ram had encroached upon the Government Land. He prayed that appeal be dismissed.

In this case pass a reasoned and detailed final order as Collector, Sub Division, Arki deciding the Appeal filed by Sh Sadhu Ram.

(30 Marks)

Question Number II

One Mr Ram Lal died on 1.1.2014 leaving behind the following legal heirs:

- a. Mrs Lalita Devi (widow)
- b. Mr Ajay Kumar and Mr Vijay Kumar (both married sons)
- c. Mrs Lata and Mrs Ganga (married daughters)
- d. Miss. Radha, unmarried daughter

Patwari entered the mutation on the basis of the legal heirs as per the Hindu Succession Act. On 3.5.2014 at the time of Mutation, when the Tehsildar, Una went in the concerned village to attest the mutations in open house, Mr Vijay Kumar presented a Registered Will dated 15.10.2012 whereby said Ram Lal had willed his entire movable and immovable property in the name of his son Mr Vijay Kumar as his wife, son and daughters were not taking care of him and also because he was living only with his younger son since 2011. This Will was contested by the widow of Sh Ram Lal and other legal heirs (son and daughters) who said that said Sh Ram Lal had not been living with Mr Vijay Kumar only as alleged but he and his wife Mrs Lalita were staying with all their sons and daughters by rotation. They said that the said Will was executed under pressure and could not be relied upon. Then Sh Ajay Kumar told the Tehsildar that his father had executed another Will in favour of his wife (Mrs Lalita) and his son (Mr Ajay Kumar). He said that he would present the Will on the next date. The Tehsildar adjourned the proceedings and gave time to present the Will said to have been executed by said Sh Ram Lal in favour of Smt Lalita and Sh Ajay Kumar. He asked the parties to be present in Tehsil Office Una on the next date (3.6.2014) before him.

Tehsildar, Una took up proceedings in the Tehsil Office on 3.6.2014 in the presence of parties, the Lambardar, Pradhan of the Panchayat concerned and also a few people of the village who were present. Sh Ajay Kumar presented an unregistered Will dated 15.12.2013, executed by said Sh Ram Lal and written by Sh Guru Dutt, ex-Pradhan of the Panchayat and witnessed by two people of the village. In this Will said Sh Ram Lal had willed his entire property in the name of Smt Lalita Devi (wife) and Ajay Kumar (son) in equal shares and had also directed both of them to marry his youngest daughter in a befitting manner. He had given nothing to his other son and married daughters. Sh Ram Lal had also cancelled earlier Will by this unregistered Will dated 15.12.2013.

Sh Vijay Kumar produced the Advocate who had drafted the Will, and the document writer who had typed the Registered Will in support of his claim. Sh Ajay Kumar produced the ex-Pradhan and the two witnesses in support of the unregistered Will.

The married daughters objected to both the Wills and said that both Wills were fabricated. They said that their father and mother did not get along well, therefore for most of the time in a year they lived separately. Their father lived mainly with Mr Vijay, and the mother lived with Mr Ajay. They also said that in the month of December their father was admitted in the hospital from 3.12.2013 to 28.12.2013 and could not have executed the Will. They produced the record of the hospital. They said that Mutation of inheritance should be attested on the basis of the Hindu Succession Act.

Tehsildar Una considered the matter and passed the following Order: *"The matter concerns the succession and inheritance. Two wills have been presented before me and some of the legal heirs are questioning these. Therefore, I order that the Mutation be kept pending till the decision about the genuineness of the Will is obtained by the parties from the court of competent jurisdiction."*

Against this Order three separate Appeals were filed before the Collector, Sub Division Una.

Sh Ajay Kumar, Smt Lalita and Ms Radha filed an Appeal stating that since the law was clear that the latest Will was to be considered, the Tehsildar should have attested the Mutation on the basis of the Will dated 15.3.2013.

Sh Vijay Kumar appealed against the Order of Tehsildar stating that it was established that their father lived only with him since 2011 and that was the reason he had left all his property in his name by way of a registered Will. The Will dated 15.12.2013 was fabricated one as his father was so sick that he could not have executed any Will at that time.

The married daughters appealed against the Order on the ground that the Revenue Officer should have attested the Mutation on the basis of the Hindu Succession Act and said that both the Wills were fabricated and were executed by pressurising their father.

Pass a reasoned and detailed Final Order as Collector, Sub Division Una with a clear direction to the Tehisldar to attest the Mutation in the manner you deem fit as Collector of the Sub Division.

(25 Marks)

Question Number III (Note: This question has two parts)

Mr Ajaib Singh and Ganesh Dutt filed an Application under Section 123 of the HP Land Revenue Act, 1954 for partition of the joint land before the Assistant Collector Ist Grade. This application was contested by Mr Chattar Singh who claimed exclusive possession of the said land and also stated that he had become owner of the said land by way of adverse possession. Mr Chattar Singh pleaded that the Revenue Record clearly showed that he had his own house and cowsheds, cultivated fields etc on the land in question and the Applicants were not in possession of the said land since generations. Ld Assistant Collector Ist Grade took written submissions of the parties on record and passed following Order: *“Objections raised by Mr Chattar Singh cannot be considered as there is no question of title qua joint property by one of the co-sharers. Secondly Mr Chattar Singh has failed to show that any family partition ever took place between the co-sharers. Thirdly, it is a settled law that the possession of one co-sharer is possession of all. Therefore objections are set aside. It is ordered that proposal for mode of partition be drawn strictly as per the title in khata.”*

Deatils about land and shares is as follows: Khata/Khatauni 4/4, Kita 27, measuring 48-13 bigha situated in Muhal Rampur, Tehsil and District Hamirpur in equal shares of Mr Ajaib Singh and Mr Ganesh Dutt both sons of Sh Desh Raj son of Sh Hem Raj and Sh Chattar Singh son of Sh Ganga Ram son of Sh Hem Raj as per Jambandi 2007-08.

Draw Mode of Partition as Assistant Collector, Ist Grade and Write Order

(20 Marks)

The Mode of Partition was challenged by Mr Chattar Singh before the Collector, Sub Division on the following grounds:

- a. Tehsildar should have decided the question of title first.
- b. Tehsildar ignored the provision of Para 14.13 A of the HP Land Records Manual.
- c. Trial court did not afford opportunity of being heard and to lead evidence.

During the arguments before Collector Sub Division, Id counsel for Appellant (Sh Chattar Singh) relied upon 2007 (2) Cur. L J (HP) in Revision Petition No 158 of 2015 decided on 19 December, 2006 by the Financial Commissioner (Appeals) HP in case titled Sunka Ram vs Prakash Chand and others where it was held that Fard Kabza was a precondition to complete partition proceedings. Ld Counsel for the Respondents (Sh Ajaib Singh and Sh Ganesh Dutt) relied upon 2001 (2) Sim. L.C. 7 in Revenue Revision No. 369 of 1996 decided on 12 March, 2001 in case titled Bhagat Ram alias Bhagat Singh vs. Smt Bir Dei and another where it was held that mere assertion of question of title is no proof of the same. Also relied 1994 (4) S.L.J. 3269 Financial Commissioner HP Revision Petition No 69 of 1988 titled as Dharam Singh and another vs. Smt Sumitra and others where it was decided that possession of one co-sharer is possession of all.

Write a reasoned final order as Collector, Sub Division deciding the Appeal. (25 Marks)