

HP Board of Departmental Examination
Departmental Examination for Tehsildars, October 2016

PAPER NO. 6 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/Bare Acts/Rules And Government Notifications are allowed**

QUESTION NUMBER: I

One Mr Devinder Lal died on 12.12.2012 leaving behind following legal heirs: Smt. Lakshmi (widow); Sh. Gautam and Sh. Vikrant (sons); Smt. Seeta, Kumari Geeta and Kumari Radha (daughters). The elder son Mr. Gautam presented an unregistered Will dated 01.12.2012 to the Patwari who entered the Mutation on the basis of this Will vide which the deceased had willed his entire property in the name of his elder son, Mr. Gautam. The Will stated that he was neglected by his wife and other children who lived separately from him and that he was living with his elder son's family since 2010. On 01.02.2013, when the Tehsildar went in the concerned village to attest the Mutation Sh. Vikrant presented a Registered Will dated 05.05.2010 vide which the deceased had willed his property in the name of his wife (till she was alive) and after that in the name of his two sons in equal shares. Both sons were present before the Tehsildar and each one of them vouched for the genuineness of the Will presented by him, The Tehsildar postponed the hearing and directed the Patwari to summon all legal heirs.

On the next date, 01.03.2013 the widow, both sons and all the three daughters of Sh. Devinder Lal were present. Both Sh. Gautam and Sh. Vikrant presented the persons who had written the Will and those who had witnessed the Will. The daughters produced hospital record of their father's illness claiming that he was not well since 2009. Both sons admitted their father was not well since 2009 but both of them said that he was of the sound mind. Elder son claimed that the Will executed in December 2012 was latest and genuine and his father lived with him only. Younger son and widow claimed that the Will executed in 2010 was true Will and late. Sh. Devinder lived with his both sons alternatively. Smt. Lakshmi said that she along with her unmarried daughters lived with younger son in their ancestral house in the village. She also said that her elder son (Sh. Gautam) worked in the city and Sh. Devinder Lal, her late husband, was

living mostly with him due to the fact the hospital where his treatment was going on was in the city. She and her younger son stated that the Will of December 01, 2012 was obtained under duress and by exerting pressure upon deceased who was very sick at that time and died on 12.12.2012. The daughters claimed that the property should devolve as per Hindu Succession Law as both the Wills were fraud and they were deliberately excluded from lawful inheritance.

Pass an Order dated 01.02.2013 (05 Marks)

Pass the Final Order on the Mutation as AC Ist Grade. (15 Marks)

QUESTION NUMBER II

Tehsildar (Assistant Collector First Grade), Una received a report from the Revenue Field Staff in the month of June 2014 that Mr. Ajay Kumar has encroached upon Government Land. He started proceedings against Mr Ajay Kumar under Section 163 of the HP Land Revenue Act (hereinafter called the Act). The report stated that he had encroached upon government land comprised in Khasra No. 119/1 measuring 10 biswa and Khasra No. 119/2 measuring 4 biswa (total 0-14 bigha) as per tatima attached with the report.

The Tehsildar, Una issued Notice to the encroacher who filed following written objections: tatima was prepared by Patwari who was not competent to do so; no demarcation was done by the revenue officer as the land in question was abutting his private land; the land mentioned in the report was in his possession since generations; there was question of title involved and the proceedings were bad in the eyes of law.

On the prayer of advocate for Sh. Ajay Kumar Ld AC Ist Grade framed preliminary issue regarding Question of Title.

Tehsildar examined Patwari and Kanungo concerned who stated that Sh. Ajay Kumar had encroached upon government land and there was no entry in any of the Khasra Girdawri or Jamabandi in his name till date. In cross examination both of them denied possession of the encroacher from earlier times. They also denied the suggestion that the government land in question was abutting private land of the encroacher. Sh. Kiran, the Pradhan and Sh. Ramesh, Up Pradhan of the Gram Panchayat concerned stated that the government land was encroached upon by said Ajay Kumar. They stated that the encroachment was recently done in the month of June and that he was still continuing with unauthorised construction. In cross examination Pradhan admitted that he and Ajay Kumar were contesting candidates in the elections.

Sh. Ajay Kumar examined himself and one other person named Sh. Krishan Kumar. Sh Ajay Kumar said that he, and his father, was in possession of the said land for more than 50 years. The land was not demarcated properly. The statements of Pradhan and up Pradhan were biased as they were his political rivals had he had fought elections for the post of Pradhan in the month of

April against Sh. Kiran Kumar. In cross examination he admitted that he could not produce any documentary evidence regarding his possession. Sh. Krishan Kumar stated that he knew Sh Ajay Kumar and his family for more than 60 years and the land in question was in their possession since time immemorial. In cross examination he admitted that he was in Army and had served outside the State for many years.

- a. **Pass an order as Assistant Collector Ist Grade deciding whether question of title is involved or not.**
- b. **Pass Final Order in the matter (as a Civil Court or as a Revenue Court depending upon your answer to point (a) above)**

40 Marks (20 marks each)

QUESTION NUMBER III

Consider the following facts:

Sons and daughters of Sh. Ganpat Ram son of Sh. Nanak Chand filed an application under Section 104 (3) of the HP Tenancy and Land Reforms Act, 1972 before the Land Reforms Officer (Tehsildar), Kangra with the prayer to grant proprietary rights to them as they were recorded as Non-Occupancy Tenants on the land comprised in Khasra No. 45 and 46 measuring 10 bigha situated in Mauja Kangra, Tehsil and District Kangra (the land in dispute). They claimed that they were recorded as Non-Occupancy Tenants over the land in dispute even before coming in force of the Act and are in continuous possession of the same. Since the vestment of proprietary rights was automatic after the Act came into force in the year 1974, they should have been made owners but the revenue authorities failed to do so. The Applicants pleaded that the land in dispute was recorded in the ownership of the Panchayat in the year 1969-70 and their predecessor-in-interest Sh. Nanak Chand was recorded as Gair-Maurusi on it. Same position was there in the Jamabandi for the year 1974-75. On 1.12.1975, Mutation No. 200 was attested and the State of Himachal Pradesh was made owner of this land. But predecessors-in-interest of the Applicants continued in the possession column of the Jamabandi as Gair-Maurusi as can be seen from Jamabandis for the year 1979-80, 1984-85, 1989-90 and 1994-95. The applicants relied on following case law: (1986) Shim L.C. 120 titled Mili Saint David versus Dulo; (1993) 2 Shim L.C 497 titled Sant Ram versus Jash Ram and (1996) 1 Cur L.J. (HP) 374 titled Mohar Singh Versus Manju Devi.

ADA appeared on behalf of the State and filed a reply to the application and pleaded that the claim of the appellants was not justified. The State pleaded that in order to take advantage of the Act the Applicants must establish Tenancy which is a bilateral agreement between the land

owner and tenants. But in this case the revenue record does not establish any such relationship. In the absence of any clear mention of terms of tenancy in the revenue record it cannot be concluded that Applicants and/or their predecessors-in-interest were/are Non-Occupancy Tenants. Mere entry of Gair-Mourusi is not enough to establish tenancy and it must be accompanied by the entry in the relevant column of Jamabandi showing terms of tenancy such as Rent/Chakota/Galla Batai etc. There is no such entry in this case. He further argued that it is very important to note that Applicants or their predecessors-in-interest had not approached the LRO in the seventies when the Act came into force and proprietary rights were being granted. ADA, on behalf of the District Collector pleaded that the land in dispute was not tenancy land but was government land. Moreover, delay of more than 3 decades on part of the Applicants has not been explained.

ADA relied upon the following case law Bhura v. Bhagirath, ILR 1981 HP 258; Lal Chand v. Pala, 1998 (2) PLJ 1526 (HP); Maman Singh v. Resident Magistrate Gohana, 1965 PLR 161 (P&H); Vinay Kumar v. Purshotam Dass (1992 PLJ 77) State of H.P. versus Chander Dev and Ors (2007(2) Shim L.C.7). He pleaded that the Amendment in the Act, (Amendment Act, No.6 of 1988) bars tenancy upon Government Land.

Both sides produced documentary evidence in support of their respective claims. The State relied upon the land being Government Land and absence of entry in rent column. The Applicants, on the other hand, relied upon Jamabandi entries in the column of possession.

Write a detailed Order as LRO deciding the application.

40 Marks