

HIGH COURT OF JAMMU AND KASHMIR AT JAMMU

OWP No.1267/2011

CMP no. 1761/2011

Date of Decision: 10.10.2011

Bholi Devi & Ors. vs State J&K and others

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For the Petitioner(s) : Mr. A. H. Naik, Sr. Advocate with
Mr. D. S. Chowhan, Advocate.

For the Respondent(s) : Mr. D. C. Raina, Sr. Advocate with
Mr. Rohit Kohli, Advocate and
Mr. A.H.Qazi, AAG.
Mr. S.S.Nanda, Advocate.

i) Whether approved for reporting
in Press/Journal/Media : **Yes/No**

ii) Whether to be reported
in Digest/Journal : **Yes/No**

Claiming Lease Hold Rights in land measuring 5 kanals situated at Rail Head Complex, Jammu, the petitioners have approached this Court seeking quashing of Shri Mata Vaishno Devi Shrine Board Katra's Notice No. CO/Dev/33/1179 dated 25.07.2011 whereby Tenders were invited for construction of Kalika Dham, a Multi Storeyed building (Basement +5) at Rail Head Complex, Jammu, and the permission, if any, granted by Municipal Corporation, Jammu permitting construction by the Board on the aforesaid land, besides a Restraint direction to the respondents not to interfere into the petitioners' possession

over the land.

The relief sought for by the petitioners in the Writ Petition emanate from their challenge to Notifications issued under Sections 4,6,7 and 17 of the State Land Acquisition Act whereby their land was acquired and possession thereof taken.

It is admitted by the petitioners in Paragraph No. 19 of the Writ Petition that they had questioned the Acquisition of their land by the State Government for Shri Mata Vaishno Devi Shrine Board by Writ Petition OWP No. 943/1996, dismissal whereof stands questioned by them in LPA(OW) No. 170/2001 which was still sub judice.

The Board's Response to the Writ Petition indicates that pursuant to the Acquisition of petitioners' land, the possession of the property was delivered to it and being satisfied with the construction plan, the Municipal Corporation has after accepting requisite fee and other charges allowed it permission to raise construction thereon. Receipt evidencing payment of Rs.16,63,590/- and Rs. 14,000/- by the Board to the Corporation has been placed on records.

Considered the submissions of learned counsel for the parties.

The petitioners seek adjudication of their challenge to the Acquisition of land and in the event of success therein, Restraint directions against the respondents not to raise any

construction thereon and cause interference in possession thereof.

The issues that the petitioners raise in this Petition questioning the Acquisition of their land under the State Land Acquisition Act, stand decided against them with the dismissal of their earlier Writ Petition OWP No. 943/1996 and an Appeal against the Judgment of the Writ Court was pending consideration before a Letters Patent Bench.

In the circumstances, the question that therefore arises is as to whether the petitioners can re-agitate their rights in the land seeking adjudication of their challenge to Acquisition thereof afresh when the Appellate Court was in seizin of the disputes which the petitioners raise by this Petition.

Having failed in their challenge to the acquisition of their land under the State Land Acquisition Act, the petitioners are estopped from re-agitating same issues or issues which could have been raised by them in earlier proceedings, in view of the Principles of Judicial Amity and *Res Sub Judice*.

All the issues that the petitioners have raised in this Petition being *sub judice* before the Letters Patent Bench, the petitioners' Writ Petition cannot be entertained for fresh adjudication in exercise of this Court's Extra Ordinary Civil Original Jurisdiction which had been invoked by the petitioners on an earlier occasion too, but without success.

The petitioners' learned Senior counsel's submission that grant of building permission to the Board and its inviting Tenders for construction on the land in question provides the petitioners a fresh cause of action to approach the Court by a Separate Petition, is found untenable, in that, the petitioners plea to question Shri Mata Vaishno Devi Shrine Board's right to raise construction and grant of permission to it by Municipal Corporation, Jammu, arises out of their challenge to the Acquisition proceedings and would not afford any fresh cause of action to them to question the Board's right to raise construction or deal with the acquired property in any manner whatsoever, when their rights in the property stand extinguished pursuant to its acquisition under the State Land Acquisition Act.

For all what has been said above, the issues sought to be raised by the petitioners through their Petition, cannot be entertained by this Court when their Appeal against the Judgment delivered in OWP No. 943/1996, raising similar issues before the Appellate Court was still *sub judice*.

Thus, found without merit, this Writ Petition is dismissed.

(J.P. SINGH)
JUDGE

JAMMU
10.10.2011
Vijay

**HIGH COURT OF JAMMU AND KASHMIR AT
JAMMU**

**OWP No.1267/2011
CMP no. 1761/2011**

Date of order: 26.09.2011

Bholi Devi & Ors. vs State J&K and others

Coram:

Mr. Justice J.P.Singh, Judge.

Appearing Counsel:

For the Petitioner(s)	: Mr. A. H. Naik, Sr. Advocate with Mr. D. S. Chowhan, Advocate.
For the Respondent(s)	: Mr. D. C. Raina, Sr. Advocate with Mr. Rohit Kohli, Advocate and Mr. A.H.Qazi, AAG. Mr. S.S.Nanda, Advocate.

Heard.

Judgment is reserved.

**(J.P. SINGH)
JUDGE**

JAMMU
26.09.2011
Sunita.