

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No. 2730 of 2010

Date of Decision: 30.6.2017

<i>Shri Jai Parkash and others</i>	<i>...Petitioners</i>
<i>Versus</i>	
<i>State of Himachal Pradesh and others</i>	<i>...Respondents</i>

Coram:

The Hon'ble Mr. Justice Vivek Singh Thakur, Judge.

*Whether approved for reporting?*¹ Yes

<i>For the Petitioners:</i>	<i>Ms.Shashi Kiran, Advocate.</i>
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<i>For the Respondents:</i>	<i>Mrr.V.S. Chauhan, Additional Advocate General.</i>
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Vivek Singh Thakur, Judge (oral)

This petition has been filed against omission of respondents to acquire the land of petitioners in accordance with law for utilization to construct Mari-Ka-Ghat Dingar-Kinnar-Mathana Road in Mauja Lana Chhabyul, Tehsil Pachhad, District Sirmaur, H.P., seeking directions to respondents to pay suitable compensation/damages on account of occupation and utilization of land including damage caused to trees etc. of petitioners for the said road from the date of actual taking over the possession of acquired land in accordance with law under the relevant provisions of relevant Act.

2. Petitioners' case is that aforesaid road was constructed without acquiring the land in accordance with law and also without

¹ *Whether reporters of Local Papers may be allowed to see the judgment? yes*

consent of the owners. However, lands of other villagers of village Lana Chhubyal was utilized for construction of the same road was acquired by respondents vide award No. 14 of 2001, announced on 11th February, 2002 by Land Acquisition Collector, HPPWD South Zone, Winter Field, Shimla-3 (Annexure P-3) and also that land of adjacent villages utilized for the same road was also acquired by respondents by passing award No. 4 of 2001 dated 5th October, 2001, wherein amount of compensation was enhanced by learned District Judge in Land References preferred by land owners therein and the said enhancement was upheld by this Court in RFA No. 187 of 2007, decided on 4.1.2008, titled State of Himachal Pradesh and Others Vs. Amar Singh and other connected matters (copy of which is on record as Annexure P-8).

3. Petitioners have also placed on record jamabandies (Annexure P-1) and spot tatima (map) (Annexure P-2) of village Lana Chhabyal on record, indicating the ownership of petitioners and construction of road thereupon including Khasra Nos. 270/1, 272/1, 273/1, 276/1 and 339/148/2, belonging to them.

4. Perusal of award No. 14 of 2001 (Annexure P-3), reveals that in notification dated 8.9.1998 issued under Section 4 of the Act, Khasra Nos. 270/1, 272/1, 273/1, 276/1 and 339/148/2 were also included in the list of Khasra numbers proposing to acquire the land comprised therein, utilized for construction of road. However, these Khasra numbers were excluded in

notification under Sections 6 and 7 of the Act for the reasons best known to the respondents. Being aggrieved by omissions and commissions on the part of respondents, present petition has been filed.

5. In reply to the petition, utilization of lands of petitioner for construction of road, non-payment of compensation for the said utilization, acquisition of lands of co-villagers vide award No. 14 of 2001 (Annexure P-3), payment of compensation to the land owners for utilization of their lands for the same road referred in RFA No. 187 of 2007, titled as State of Himachal Pradesh Vs. Amar Singh (annexure P-8), initiation of proceedings to acquire the land of petitioners and dropping thereof, is not disputed. However, relying upon pronouncement of the Apex Court in case State of Maharashtra Vs. Digamber (1995) 4 SCC 683 and decision of this Court rendered on 2.3.2013 in ***CWP No. 1966 of 2010, titled Shankar Vs. State of Himachal Pradesh***, dismissal of the petition has been prayed on the ground of delay and laches on the part of petitioners to approach the Court. It is further contended that petition is not maintainable for the reasons that there are highly disputed questions of law and fact, which can be adjudicated only in civil suit by leading evidence and as the petitioners have lost their remedy to file civil suit, because of expiry of limitation, the petition deserves to be dismissed.

6. Though it is stated in the reply that proceedings to acquire the land of petitioners were allowed to lapse for reasons explained in detail in preliminary submissions, but preliminary submissions finds no mention of any such reason. It is also contended that petitioners had never objected to construct the road through land in question, rather they voluntarily permitted to do so without raising any objection and therefore, they are not entitled to raise demand for compensation at this stage.

7. In a judgment of Full Bench of this Court, passed in *Shankar Das'* case supra, relied upon by the respondents, it was held as under:-

“As per the view of the majority, the reference is answered as follows:-

“In cases where the State has not taken steps under the Land Acquisition Act for the purpose of construction of roads on the ground that the required land had been willingly surrendered either orally or otherwise or with implied or express consent by the owners at the relevant time, they can invoke the jurisdiction refuting such express or implied consent or the stand of the State on voluntary surrender, only within the time within which such a relief can be claimed in a Civil Suit. Once such a question is thus raised in a Writ Petition the same can be considered in the writ petition itself.”

Respondents have also referred judgments passed in **CWP No. 649 of 2015, Ram Murti & others Vs. State of H.P. & others, decided on 29.4.2015, CWP Nos. 661 to 664 of 2015, Nikka Ram and others Vs. State of Himachal Pradesh and others, decided on 15.7.2015, RSA No. 6 of 2014 State of H.P. and**

others Vs. Baldev and others, decided on 14.10.2015 and CWP No. 6945 of 2013 Sant Ram & others Vs. State of H.P. & others, decided on 16.9.2013, wherein, as per respondents, this Court had declined to issue directions to pay compensation to land owners in similar circumstances. It is also submitted that judgment in *Sant Ram's* case has attained finality as the Apex Court had also dismissed SLP (C) 215/2015 on 28.11.2006 preferred by land owner petitioner, with observation that no legal and valid ground for interference was found.

8. Petitioners have relied upon judgments passed by this High Court in ***Jai Ram Vs. State of H.P. & others 2011 (3) Shim. LC 91, CWP No. 5023 of 2010 Tek Chand and others Vs. State of Himachal Pradesh and another*** decided on 7.7.2016 ***and CWP No. 3467 of 2009 Shri Prakarti Bhushan Singh Vs. The State of H.P. and others***, decided on 11.8.2016, wherein as per petitioners, direction to acquire land has been issued in similar circumstances. Reliance has also been put on judgment dated 29.10.2015 passed by the Apex Court in Civil Appeal No. 9105 of 2015 (arising out of SLP (C) No. 2373 of 2014) titled ***Raj Kumar Vs. State of H.P.***, wherein it has been held as under:-

“There is in our opinion considerable merit in the submission made by Mr. Nag. It is true that the appellant had approached the High court rather belatedly inasmuch the land had been utilized for some time in the year 1985-86 while the writ petition was filed by the appellant in the year 2009. At the same time it is clear from the pleadings in the case at hand that the user of

the land owned by the appellant is not denied by the State in the counter affidavit filed before the High Court or that filed before us. It is also evident from the averments made in the counter affidavit that the State has not sought any donation in its favour either by the appellant or his predecessor in interest during whose life time the road in question was constructed. All that is stated in the counter affidavit is that the erstwhile owner of the land "might have donated" the land to the State Government. In the absence of any specific assertion regarding any such donation or documentary evidence to support the same, we are not inclined to accept the ipsit disit suggesting any such donation. If that be so as it indeed is, we fail to appreciate why the State should have given up the land acquisition proceedings initiated by it in relation to the land of the appellant herein. The fact that the State Government had initiated such proceedings is not in dispute nor is it disputed that the same were allowed to lapse just because the road had in the meantime been taken under the Pradhan Mantri Gram Sadak Yojna. It is also not in dispute that for the very same road the land owned by Kanwar Singh another owner had not only been notified for acquisition but duly paid for in terms of Award No. 10 of 2008."

9. It is submitted on behalf of petitioners that in present case, there was no implied or express consent of the owners of land and for that reason only State had initiated process for acquisition of land in question by taking steps for issuing notification under Section 4 of Land Acquisition Act and also after acquiring land not only of adjoining villages, but also of co-villagers, used for the same road, compensation was paid to land owners and as there was no implied or express consent of owners in present case, it is not covered by law laid by the Full Bench of this High Court in *Shankar Das's* case supra, in which the owners

had willingly surrendered their lands either orally or otherwise or with implied or express consent for construction of road but, later on, were asking for compensation.

10. The ratio of law laid down by Full Bench of this Court in *Shankar's case* supra is applicable to those cases where State not only has not initiated any steps for acquisition of land but also claims consent of land owners for construction of road. In present case Respondents have not placed on record any document to establish consent of owners at the time of construction of road or any point of time thereafter. Rather, State had initiated process for acquisition, termination whereof was for delay and laches on the part of State but not for consent of land owners. Therefore, judgment of *Shankar Das's case* (FB) supra is not applicable to present case.

11. Pronouncements in all other cases relied upon by respondents-State also do not deal with the issue where the road was constructed, compensation was paid to some of adjoining land owners and acquisition of land, utilized for construction of road, was proposed by undertaking process for issuing notification under Section 4 of the Land Acquisition Act, but allowed to lapse for unexplained reasons by excluding the land of the petitioners from notification under Sections 6 and 7 of the Act either for extraneous reasons or laxity on part of authorities/department concerned, despite having no consent of land owners to utilize the land for

road construction. Therefore, on facts, case law cited by respondents is distinguishable and not applicable in the present case.

12. In *Sant Ram's* case, land of petitioners therein was utilized for construction of road, but without undertaking any process for its acquisition under the Act. Whereas, in present case, State itself had proposed acquisition of land in question by drafting and proposing notification under Section 4 of the Land Acquisition Act for publication. Therefore, ratio of law laid down in the said case is not applicable in present case. In *Ram Murti's* and *Nikka Ram's* case, road was construction under Pradhan Mantri Gramin Sarak Yojna (PMGSY) on popular demand of people of area, only after voluntarily surrender of possession of their lands by villagers, whereas in present case, road is not constructed under PMGSY and there is nothing on record to establish that road was constructed on popular demand of people of area only after surrender of possession by villagers. Rather, contrary to that, there was a proposal for acquisition of land in question which was deliberately allowed to be lapsed for inaction on part of State, but payment of compensation to other land owners for utilization of their land for the same road has not been denied. Therefore, State cannot claim benefit on account of its own inaction as proposal of State has raised hope and legitimate expectation that sooner or later their land is going to be acquired.

13. In *Baldev Sing's* case (RSA No. 6 of 2014), relief of compensation or recovery of possession was declined by the Court for the reason that plaintiffs had not prayed for the said relief in their pleadings and no foundation was laid for that relief. Whereas in present case, petitioners have specifically prayed for direction to respondents to pay compensation after acquisition of land in question. Therefore, this judgment is also not relevant in present case.

14. In view of above discussion, pronouncements relied upon by respondents are not applicable in present case and cannot be made basis to reject the claim of petitioners.

15. In *Jai Ram's* case (2011(3) Sml.LC 91) supra, relied upon by petitioners, this Court has held that in absence of consent of land owners, the act of State or its agencies, to utilize private lands without payment of compensation to the land owners, is not permissible under law being contrary to mandate of Article 300A of the Constitution of India and not raising of objection by land owner, when his land is being encroached upon either by State or its agencies or even by private persons, does not disentitle him to seek his legal remedy.

16. Though Article 19 (f) of the Constitution of India, declaring right to acquire, hold and dispose of property a fundamental right, has been omitted by Constitution (44th Amendment) Act, 1978 w.e.f. 20.6.1979, however by the same

Amendment Act, Chapter 4 in part XII of the Constitution, containing Article 300A declaring that no person shall be deprived of his property save by authority of law, has been inserted w.e.f. 20.6.1979.

17. In case ***Hindustan Petroleum Corporation Ltd. Vs. Darius Shapur Chenai and others (2005) 7 SCC 627***, the Apex Court, having regard to the provisions contained in Article 300A of the Constitution, has held it to be akin to a fundamental right and in view of these provisions, the State, in exercise of its power of eminent domain, can interfere with the right of property of a person by acquiring the same, only for a public purpose and paying reasonable compensation therefor.

18. The Constitution provides protection from depriving a person of his property except by due process of law. State cannot be permitted to practice and propagate principle of might is right, as “Rule of Law” is the basic essence of the Constitution and any arbitrary act is antitheses to rule of law. In present case, State has adopted pick and choose method and has acquired land of some of land owners utilized for construction of the same road, but has left petitioners without paying any compensation.

19. State is custodian of rights of citizens and life and property of citizens is to be protected, but not to be grabbed by the State. It is duty of State to establish and maintain “Rule of Law”.

20. In ***K.B. Ramchandra Raje Urs (dead) by legal representatives Vs. State of Karnataka and others (2016) 3 SCC 422***, the Apex Court has held that writ petitioners may not be entertained and any order thereon may not be passed for inordinately delayed in filing petition with further observation that this issue need not to detain the Court from entertaining such petition as time and again it has been held that while exercising jurisdiction under Article 226 of Constitution, the High Court is not bound by any strict rule of limitation and if substantial issue of public importance touching upon the fairness of governmental action is raised, the delayed approach to reach the Court, will not stand in the way of exercise of jurisdiction by the Court. In present case, it is undisputed that land owners of adjacent villagers were compensated for using their lands for construction of the same road for which land of petitioners was utilized, but despite initiating proposal for publication of Section 4 notification under Land Acquisition Act, intended acquisition of land of petitioners and other villagers, was dropped, depriving the petitioners from lawful compensation, for which they were and are entitled. State is supposed to act impartially and fairly, but the facts in the present case establish that State has acted arbitrarily and unfairly, therefore, plea of delay and laches raised by respondents to oust petitioners, cannot be a ground to dismiss present petition.

21. Co-ordinate Bench of this Court almost in similar circumstances in ***Shankar Singh and others Vs. State of H.P. and another, CWP No. 3031 of 2009, decided on 7.7.2016 and Shri Prakarti Bhushan Singh Vs. The State of H.P. and others CWP No. 3467 of 2009, decided on 11.8.2016*** has directed respondent-State to acquire land, utilized for construction of road, in accordance with law. In *Tek Chand's* case (CWP No. 5023 of 2010) also coordinate Bench of this Court, relying upon ***Jeet Ram Vs. State of Himachal Pradesh and others, Latest HLJ 2016 (HP) 615 and Lal Chand Vs. State of H.P. and others, CWP No. 2540 of 2009, decided on 13.5.2016***, wherein it is held that no person can be deprived of his property without following the due process of law, has restrained the respondents-State from utilizing the land of private owners under Pradhan Mantri Gram Sarak Yojna (PMGSY) for the purpose of construction/widening of road without express consent of land owners or without the said land being donated by land owners to the concerned Department or without acquiring the said land as per provisions of Land Acquisition Act.

22. In view ratio of law laid down by the Apex Court and in pronouncements of this High Court, in the given facts and circumstances of the case in hand, as discussed above, petition is allowed and respondents are directed to initiate acquisition process within three months from production/receipt of copy of this

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judgment, whichever is earlier, to acquire land of petitioners utilized without paying any compensation for construction of road and to ensure completion of process and payment of compensation as per entitlement of petitioners within time stipulated in the relevant provisions of law as applicable. The petition stands disposed of, so also pending application(s), if any.

(Vivek Singh Thakur)
Judge

30th June, 2017
(KRS)