

IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.6266 of 2020
Decided on: 30th August, 2024

Tara Chand & Ors.Petitioners

Versus

State of H.P. & Ors.Respondents

Coram

Ms. Justice Jyotsna Rewal Dua

¹ *Whether approved for reporting?*

For the petitioners: Mr. Ravi Tanta, Advocate.

For the respondents: Ms. Y.P.S.Dhaulta and Mr. L.N. Sharma, Additional Advocates General.

Jyotsna Rewal Dua, Judge

CMP No. 11305 of 2023 & CMP No.14726 of 2024

Allowed and disposed of.

CWP No.6266 of 2020

With consent of learned counsel for the parties, matter is taken up for hearing at this stage.

2. Petitioners' seek a direction to the respondents to acquire their land comprised in (i) Khewat No. 1, Khatauni No.1, Khasra No. 165, measuring 00-25-36 hectares, (ii) Khewat No. 1, Khatauni No.17, Khasra No. 166, measuring

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

00-07-70 hectares, and (iii) Khewat No. 1, Khatauni No.1, Khasra No. 167, measuring 04-92-02 hectares; all land parcels situated in Patwar Circle Badhawani, Mohal Shalagra, Tehsil and District Shimla, H.P.

3(i). **The facts projected by the petitioners** are that:-

3(i)(a) Petitioners are co-owners in possession of the above described land.

3(i)(b) Respondents started construction of Hira Nagar -Dhamoon road in the year 1988 and improved it further during the year 1995-96. Petitioners' above described lands were also utilized for construction of the aforesaid road.

3(i)(c) Notification under Section 4 of the Land Acquisition Act (the Act in short) was issued by the respondents on 23.11.2000. Various parcels of land in villages Badhawani and Shalagra were included in the Notification issued on 23.11.2020 under Section 4 of the of the Act. The subject land, owned by the petitioners in village Shalagra, was also within the purview of Notification dated 23.11.2000. However, notification was not taken to its logical conclusion and it lapsed.

3(i)(d) Respondents issued another Notification under

Section 4 of the Act on 12.06.2006 (Annexure P-2). The above described land parcels owned by the petitioners were part of this Notification as well. Even this Notification was also allowed to lapse by the respondents.

3(i)(e) It is the pleaded case of the petitioners that respondents thereafter though completed the land acquisition proceedings qua several other land parcels which were part of Section 4 Notification issued on 23.11.2000 & 12.06.2006, respectively, and land owners, in view of such Notifications had been duly compensated after culmination of the acquisition proceedings, but the present petitioners had been denied the compensation. The grievance of the petitioners is that the respondents have utilized their lands for construction of Hira Nagar-Dhamoon road, however, they have not been compensated.

3(ii) **Respondents No. 1 to 3** in their joint reply have not disputed the factual position asserted by the petitioners. It has been admitted that the Hira Nagar-Dhamoon road was constructed by the respondents during the year 1988 and further improved during the year 1995-96. It has also been admitted that the subject land owned by the petitioners, has

been utilized for construction of the aforesaid road. It has also been admitted that the land belonging to several other land owners, which was utilized for construction of Hira Nagar-Dhamoon road, had been duly acquired prior to 1997 and compensation was paid the land owners at the market value prevailing at that time. The respondents have primarily refuted the claim of the petitioners on the ground of delay and laches.

4. Learned counsel for the petitioners reiterated the pleadings in the writ petition and placed reliance upon the decisions, rendered in ***Delhi Development Authority Vs. Shakuntla Devi and others²; Lucknow Development Authority Vs. Mehni Hasan (deceased) through legal representatives and others³; The State of H.P. & Ors Vs. Karam Chand & Anr.⁴; Kusum & Ors Vs. State of H.P. & Ors⁵ and ; Hari Krishan & Anr Vs. State of H.P. & Ors.⁶*** in support of the claim made by the petitioners for acquisition of their land utilized by the respondents for construction for the road in question and to pay them compensation

² (2023)11 SCC 541.

³ (2023)11 SCC 564

⁴ 2023 (suppl.) HLR (DB) 2031

⁵ CWP No.5048 of 2022 decided on 04.07.2023

⁶ CWP No.7465 of 2023 decided on 21.08.2024.

accordingly.

Learned Additional Advocate General opposed the petition primarily on the ground that petitioners' claim suffers from delay and laches. The road was constructed during the year 1988, thereafter improved during the year 1995-96, whereas, petitioners had claimed the relief of acquisition of their land for the first time by preferring this writ petition in the year 2020. Learned Additional Advocate General submitted that the petitioners had acquiesced to the construction of the road. They had voluntarily offered their lands. They had consented to the construction of the road by utilizing their lands, hence, they are not entitled for any compensation.

5. I have **heard** learned counsel for the parties and considered the case file. My observations are as under:-

5(i) Respondents have not disputed that the subject land parcels owned by the petitioners, have been utilized for construction of Hira Nagar-Dhamoon road.

5(ii) The plea of the respondents that the petitioners had voluntarily offered the subject land for construction of the road in question without payment of any compensation,

is belied from the fact that the respondents had issued Notification under Section 4 of the Act on 23.11.2000 and thereafter on 12.06.2006. In both these Notifications issued under Section 4 of the Act, petitioners' land parcels alongwith several other land parcels owned by different individuals, were included. Respondents, even otherwise, have not placed on record any document to show consent alleged to have been given by the petitioners for using their property without payment of compensation.

5(iii) The respondent's have also not disputed the fact that they have acquired the lands owned by other individuals whose land parcels have been reflected in Section 4 of Notifications dated 23.11.2000 and 12.06.2006 and further that it is only the petitioners, who have been left out from payment of due compensation to them in accordance with law. The petitioners are entitled to be treated at equal footing vis-à-vis the others whose lands have been acquired for construction of the same road i.e.Hira Nagar-Dhamoon road. In given facts of the case, it is not open for the respondents to discriminate the petitioners. Once the lands belonging to some of the land owners had been acquired for construction of the

same road, it is incumbent upon the respondents to give same treatment to the present petitioners, whose lands were also utilized for the construction of that very road.

5(iv). It would also be appropriate to refer to the judgment passed by the Division Bench of this Court on 28.06.2023 in **Labdh Ram Vs. State of H.P. & Ors**⁷. The petitioner therein had raised a factual plea that though certain others, whose lands were utilized for the road, were paid the compensation, but he was denied the same even though his land was also utilized for construction of same road. Road in that case was laid in the year 1995-96. Taking note of various pronouncements, viz. **State of Himachal Pradesh Vs Umeed Ram Sharma**⁸; **Swaraj Abhiyan(I) vs. Union of India and ors.**⁹; **Hari Krishna Mandir Trust vs. State of Maharashtra & Ors.**¹⁰; **D.B. Basnett Vs. Collector East District, Gangtok, Sikkim and Anr.**¹¹; **B.K. Ravichandra and Ors Vs. Union of India & Ors.**¹²; **Sukh Dutt Ratra & Anr. Vs. State of Himachal Pradesh & Ors.**¹³, the contention of delay and laches raised by the respondents-

⁷ CWP No.6581/2021 decided on 28.06.2023

⁸ (1986) 2 SCC 68

⁹ (2016) 7 SCC 498

¹⁰ (2020) 9 SCC 356

¹¹ (2020) 4 SCC 572

¹² (2021) 14 SCC 703

¹³ (2022) 7 SCC 508

State was turned down. The observations of the Hon'ble Apex Court that the State cannot evade its legal responsibility towards those from whom private property has been expropriated, were reiterated. It will be appropriate to extract following paragraphs from Labdh Ram's case (*supra*):-

"18. In Sukh Dutt Ratra, supra, the appellant's land had been utilized for construction of road in 1972-73 without initiating any proceedings for acquisition and without paying any compensation. When the petitioner filed a writ petition on the basis of relief granted to other owners whose land was so acquired, the said Writ petition was dismissed by the High Court holding that there were disputed questions of law and fact for determination on the starting point of limitation, which cannot be adjudicated in the writ proceeding and the petitioners were given liberty to approach the Civil Court.

The Supreme Court reversed the said decision and held that nobody can be deprived of liberty or property without due process, or authorization of law and the State has a higher responsibility in demonstrating that it has acted within the confines of legality, and had not tarnished the basic principle of the rule of law.

It held that State, merely on the ground of delay and laches, cannot evade its legal responsibility towards those from whom private property has been expropriated.

It observed that the State was initiating acquisition proceedings selectively and not in every case like that of the appellants whose land was taken, and at every stage it sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law.

It held that the State cannot shield itself behind the

ground of delay and laches in such a situation as there cannot be a limitation to doing justice.

It also rejected the plea alleged verbal consent or lack of objection on the ground that no material was placed on record to substantiate the said plea and held that the State was unable to produce any evidence indicating that the land of the appellant had been taken over or acquired in the manner known to law, or that it had ever paid any compensation.

It declared that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. It directed the State to treat the subject land as a deemed acquisition and disburse compensation to the appellants therein in terms of similar orders passed in other cases within four months.

19. *In view of the above settled legal position, we are of the opinion that the stand of the State that it need not pay any compensation for utilizing the petitioner's land for the purpose of laying a road cannot be countenanced and the State is bound to pay market value compensation to the petitioner for utilizing his land for the purpose of the road.*

20. *Therefore, the writ petition is allowed with costs of Rs.10,000/- and a direction is issued to the respondents to demarcate the land of the petitioner utilized for the purpose of the road in question within four weeks, treat it as having been acquired for the said purpose and pay him the highest amount towards compensation among compensation under the awards Annexures P-3 and P-4 with all statutory benefits under the Land Acquisition Act, 1894 within eight weeks."*

In the instant case, the respondents have not

established that the land was voluntarily donated or given by the petitioners willingly for construction of the road in question.

In view of above-referred decisions, the relief prayed for by the petitioners cannot be declined on the basis of plea of delay and laches. The respondent, being a welfare State, has to act in just and fair manner after following the due process of law.

In the given facts and circumstances of the case and in light of the legal position, this writ petition is allowed. The respondents are directed to initiate the process for acquiring subject land of the petitioners utilized for construction of the road in accordance with law within a period of eight weeks from today and complete the entire process within a period of one year thereafter.

The writ petition stands disposed of in the above terms, so also the pending miscellaneous application(s), if any.

Jyotsna Rewal Dua
Judge

August 30, 2024
R. Atal