
(2019) 10 SHI CK 0089

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4002 Of 2014

Amar Singh Kashyap & Another

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 16-10-2019

Acts Referred:

Constitution Of India, 1950 — Article 12, 300A

Citation : (2019) 10 SHI CK 0089

Hon'ble Judges : Ajay Mohan Goel, J

Bench : Single Bench

Advocate : R.K. Bawa, Prashant Sharma, Balram Sharma

Final Decision : Disposed Of

Judgement

Ajay Mohan Goel, J

1. The issue which has to be decided by this Court in the present petition is as to whether the Indo Tibetan Border Police can permitted to retain the land which stood donated by the predecessor-in-interest of the present petitioners to it for the specific purpose of construction of a school, upon which no school has been constructed by the Indo Tibetan Border Police till date?

2. Brief facts necessary for the adjudication of the present petition are that vide Gift Deed (Annexure P-1), a parcel of land, details of which are mentioned therein, was gifted by Shri Kailash Chand, predecessor-in-interest of the present petitioner to the Indo Tibetan Border Police, Hindustan Tibtean Border Police, Public School, Sarahan, Tehsil Rampur. It is not in dispute that the reason as to why said land gifted to Into Tibetan Border Police was for the purpose of construction/extension of a school.

3. The grievance which has been raised by the petitioners by way of present writ petition is that the land which was so gifted by their predecessor-in-interest to the respondents for the purpose of construction/extension of the school in issue has not been utilized by Indo Tibetan Border Police for the said purpose. On the

contrary, the land has been permitted to be encroached upon. In this background, petitioners have prayed that respondents be either directed to establish/ construct the school on the property in issue and further to take steps for the removal of the encroachment upon the said land or in the alternative, if the respondents are not in a position to construct the said school, then the land be ordered to be returned back to the legal heirs of Shri Kailash Chand.

4. Reply to the petition stands filed by the respondents. The tone and tenor of the reply suggests that the respondents intended to raise building of a public school on the aforesaid land including some other land contiguous to the same, however, Kendriya Vidhyalaya Sangathan did not accept proposal of the respondents and instead the Sangathan proposed to raise construction of Kendriya Vidhyalaya on another piece of land, measuring 1.48 acre in the campus of the unit whereupon already a temporary structure stood effected and the classes were being run.

5. In this background, when this case was taken up for hearing on 02.07.2019, this Court passed the following order:-

" The grievance of the petitioners is that the land which was gifted by their father for the construction of an Indo-Tibetan Border Police Public School, Tehsil Rampur Bushahr, District Shimla, details of which are given in the petition, till date has not been utilized for the said purpose, though the said conditional Gift Deed was executed and registered on 31.08.1990. Learned Senior Panel Counsel for the respondents submits that it is not feasible to construct the school on the land which was so donated. If that is so, then there will be a direction to the respondents-Authorities to return back the land which was so gifted by the father of the petitioners to the legal heirs of deceased-Kailash Chand.

At this stage, Mr.Balram Sharma, submits that he may be granted some time to have instructions. List on 18th July, 2019, to enable learned Senior Panel Counsel for the respondents to have instructions".

6. Thereafter, on 18.07.2019, following order was passed:-

"Mr. Balram Sharma, learned Senior Panel Counsel submits that he may be granted some more time to have instructions. Let the needful be positively done within a period of two weeks from today. It is clarified that in case instructions are not imparted by the learned counsel for the respondents on the next date, then the case shall be adjudicated upon on merit.

List on 16th August, 2019".

7. Subsequently, it was submitted on behalf of the learned Senior Panel Counsel for the respondents that the case be heard on merit.

8. I have heard learned counsel for the parties and have also gone through the documents appended with the petition. Here, it is a strange and unique case wherein the respondents, who are State without the meaning of Article 12 of the

Constitution of India, neither want to use the land which was gifted by predecessor-in-interest of the petitioners for the purpose for which the land was gifted nor they want to return back the same to the legal heirs of Shri Kailash Chand.

9. On a pointed query of the Court, learned Senior Panel Counsel has candidly said that respondents do not intend to raise any school building upon the land in dispute. On a subsequent pointed query of the Court that in these circumstances, what is the hitch in returning back the land to the legal heirs of Shri Kailash Chand, the answer is that as the predecessor-in-interest of the petitioners had parted away with the land, neither the petitioners nor the legal heirs of Shri Kailash Chand have any right upon the same.

10. In my considered view, ordinarily the submissions so made on behalf of the respondents, might be understandable, provided this was a lis between private individuals or entities. But in the present case, respondents herein cannot be permitted to take said stand. The land was donated by Shri Kailash Chand with the pious purpose of a school being constructed upon the same by the respondents. The factum of the land being donated for this purpose is not disputed even by respondents who have admitted the said fact in the response so filed to the writ petition. However, they have given their justification as to why despite their endeavour, the land could not be used for the purpose of construction etc. of a school. That being the case, when it was not the initial wish of the donor to donate the land in issue to Indo Tibetan Border Police for any purpose other than the utilization of the same for the purpose of construction of the school, in my considered view, respondents have no moral or legal right to retain the said land.

11. Article 300-A of the Constitution of India, provides that no person shall be deprived of his property so by authority of law. In the present case, though the land in issue was parted by way of Gift Deed by predecessor-in-interest of the petitioners in favour of the respondents, however, as I have already mentioned above, the gift was executed for a particular purpose. It is on account of the acts of the omission of respondents that the land could not be utilized for the said purpose.

12. A perusal of the petition which has been filed in this Court clearly demonstrates that petitioners have not approached this Court with the sole intent of having the possession of the land back from the respondents. They have bonafidely made their first prayer in the writ petition to the effect that a writ of mandamus be issued to the respondents to utilize the land for the purpose for which it was donated by their predecessor-in-interest and in the alternative they have prayed that if the respondents do not intend to use it for the said purpose, then directions be issued to the respondents to return the land back to the legal heirs of late Shri Kailash Chand.

13. Keeping in view the totality of the facts involved in the present case, in my

considered view, if the respondents do not have any intent to utilize the land for the purpose for which it was donated by late Shri Kailash Chand, then they have no right to retain the said land.

14. It is relevant to observe that citizens of this country voluntarily donate their land for charitable and public purpose. If this is the kind of attitude, which is shown by the authorities to whom the land is so gifted, then in future no public spirited person shall come-forth and donate the land for charitable or public purpose and thus, contribute towards the over all development of the society.

15. Accordingly, this writ petition is disposed of with the direction that it shall be open to the respondents to utilize the land in issue for the purpose for which it was donated by late Shri Kailash Chand, provided that the same is utilized for the purpose of construction of a school building within a period of three months from today. In the event of the respondents failing to do the needful on or before 31.01.2020, then respondents shall hand over the vacant possession of the land to the present petitioners. The onus to remove encroachment, if any, upon the land shall be upon the respondents. It is clarified that the factum of handing over the land by the respondents to the petitioners shall not amount to declaration that petitioners are solely entitled to the said land and in case there are any other legal heirs of late Shri Kailash Chand, their rights shall remain intact qua the land. Pending miscellaneous applications, if any, stand disposed of. Interim order, if any, also stands vacated.