

(2023) 06 SHI CK 0092
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No.7710 Of 2023

Balwant Singh

APPELLANT

Vs

State Of Himachal Pradesh And Another

RESPONDENT

Date of Decision : 28-06-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19(1)(b), 21, 226, 300A
Code Of Civil Procedure, 1908 — Section 80
Land Acquisition Act, 1894 — Section 4

Citation : (2023) 06 SHI CK 0092

Hon'ble Judges : M.S. Ramachandra Rao, CJ;Ajay Mohan Goel, J

Bench : Division Bench

Advocate : Romesh Verma, Hitesh Thakur, Anup Rattan, Rakesh Dhaulta,
Navlesh Verma, Pranay Pratap Singh, Gautam Sood, Arsh Rattan

Final Decision : Allowed

Judgement

M.S. Ramachandra Rao, CJ

1. In this writ petition, petitioner contends that he owns land ad-measuring 00.46.92 hectares in khata no. 11, khatauni no. 44, khasra no. 1481, at Mohal Lowerkotli, Tehsil Rohroo District Shimla ,H.P; that it is a very fertile land having an apple orchard and in this land, the respondents have constructed a road called "Rohroo-Parsa-Shekhhal road" via Dhara inspite of his objections for the same without acquiring it and without paying any compensation for it.

2. It is alleged that the Sub-Divisional Officer, HPPWD, Rohroo as well as the Executive Engineer, HPPWD Rohroo assured payment of compensation to him and even issued receipt regarding apple plants over the different plots of different owners whose land was going to be occupied for construction of the road, but while granting compensation to others, denied him compensation. He also contended that in a measurement book, entries were made on 28.7.1995, and on the assurance of the said officials that compensation would be paid after acquiring his land, he allowed the construction work to go on.

3. He alleged that the construction work ought to have been carried out after acquisition of land, but it was not done.

4. He gave illustrations in para 10 of the Writ Petition of the certain land acquisition proceedings where awards had been passed for payment of compensation to the land owners for the said work of construction of the same road and contended that he had given Annexure P-4 demand notice dt. 4.3.2021 to the respondents but they did not take any action thereon.

5. He therefore prayed that respondents be directed to initiate land acquisition proceedings with respect to his land which was utilized for construction of the road and to make payment of compensation along with all statutory benefits at an early date.

The stand of the respondents

6. Reply has been filed by the respondents opposing the grant of relief to the petitioner.

7. Respondents contended that the Writ petition suffers from delay and laches and is liable to be dismissed.

8. They also contended that the work of construction of the said road was started on the persistent demand of the people of the area, including the petitioner to provide road connectivity which was completed in 1997-1998 and at the time of construction of the road all people of the village, including petitioner, voluntarily offered the land availing road connectivity, and with the consent of all the people of the area, road was constructed.

9. It is contended that the petitioner or other land owners never raised any objection or demand for compensation of the land since its construction, and with the delay of 23 years, this Writ petition is filed.

10. It is also contended that there were disputed questions of fact which could not be adjudicated in the Writ petition and the petitioner should approach the Civil Court.

11. It is stated that the demand for compensation raised by the petitioner, after availing road connectivity is unjustified.

12. Reliance is placed on the policy decision of the year 1998-99 of the then State Government of Himachal Pradesh that all rural link roads would be constructed only if the land owners donate their land for the construction of the road free of costs.

13. It is denied that there was any assurance given to the petitioner for payment of compensation, and it is contended that there is no authority vested in any officers of the PWD department to give such assurance.

14. It is stated that there was no question of initiating acquisition proceedings as the road was constructed on the demand of the people of the area by providing

land free for construction of the road. It is stated that the petitioner voluntarily and freely offered his land for laying the road and he cannot now demand compensation for it.

The consideration by the Court

15. We have noted the contentions of the parties.

16. We may point out that in case of *State of Himachal Pradesh vs. Umed Ram Sharma* (1986) 2 SCC 68 the Supreme Court held that the entire State of Himachal Pradesh is a hilly area and without workable roads, no communication is possible; every person is entitled to life as enjoined in Article 21 of the Constitution of India; every person has right under Article 19 (1) (b) of the Constitution of India to move freely, throughout the territory of India ; for the residents of hilly areas, access to road is access to life itself.

It accepted the proposition that there should be road for communication with reasonable conditions in view of the constitutional imperative and denial of that right would be denial of the life as understood in its richness and fullness by the ambit of the Constitution.

It declared that to the residents of the hilly areas, as far as feasible and possible, society has a constitutional obligation to provide road for communication. This was reiterated in *Swaraj Abhiyan(I) vs Union of India an others* (2016) 7 SCC 498 .

17. Therefore, the stand of the State that there was a policy for providing roads on demand of residents as a favour to them on conditions that they would not claim compensation, cannot be sustained because such a stand is violative of Article 300A of the Constitution of India.

18. As held by the Supreme Court in *Hari Krishna Mandir Trust vs State of Maharashtra and others* (2020) 9 SCC 356 though the right to property is not a fundamental right, it is still a constitutional right under Article 300A of the Constitution of India and also a human right; in view of the mandate of Article 300A, no person can be deprived of his property save by the authority of law; though the State possesses the power to take or control the property of the owner of the land for the benefit of public, it is obliged to compensate the injury by making just compensation.

The Supreme Court held that though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300A of the Constitution, it is in-built in the said Article, and the State, seeking to acquire private property for public purpose, cannot say that no compensation shall be paid.

It also held that the High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where

the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion mala fide, or on irrelevant consideration.

In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority. In appropriate cases, it held that in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the government or the public authorities should have passed, had it properly and lawfully exercised its discretion. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined and the High Court has jurisdiction in a petition under Article 226 to try issues both of fact and law.

19. Similar view was also taken in *D.B. Basnett vs. Collector, East District, Gangtok, Sikkim* and another (2020) 4 SCC 572.

In that case, certain private land was found by the owner in March 2002 to have been wrongly encroached and trespassed by the Agriculture Department of the Government of Sikkim which was using it as an agricultural farm. He got issued a notice under Section 80 of the Code of Civil Procedure, 1908 alleging trespass and seeking possession. When there was no response to this notice, he filed a suit before the Court of District Judge (E&N), Gangtok, Sikkim, but the suit was dismissed on 31.10.2006 on the ground of limitation and also on merits.

Appeal filed against the said judgment was also dismissed by the High Court.

The Agriculture Department had contested the proceedings stating that it had followed due process while acquiring the land in 1980 and had even paid compensation and the suit was also barred by limitation.

The Supreme Court allowed the appeal of land owner.

It held that there was no evidence that the land was acquired by initiating process under Section 4 of the Land Acquisition Act, 1894 or by issuance of a declaration thereafter. There was also no material to show that the compensation was paid or consent was obtained for acquisition.

It held that following the procedure under the Land Acquisition Act, 1984, is mandatory and an entry into premises without complying with the same would result in the entry being unlawful.

It concluded that the respondents had failed to establish that they acquired the land in accordance with law and pay due compensation, and directed restoration of possession, and also payment of damages for illegally use and occupation of the same for the period of three years prior to the issuance of the suit notice. These principles were again reiterated in *B.K. Ravichandra and others vs. Union*

of India and others (2021) 14 SCC 703 and Sukh Dutt Ratra and another vs. State of Himachal Pradesh & others (2022) 7 SCC 508.

20. In Sukh Dutt Ratra (6 Supra) , the appellants 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.

21. Since the respondents have utilized a portion of the petitioner's property for construction of the road in question, though the extent utilized is not very clear, we reject the plea of delay and laches raised by the respondents and hold that the action of the respondents in laying the road through the petitioner's land without paying any compensation is violative of Articles 14 and 300A of the Constitution of India and declare that the petitioner cannot be denied

compensation on the ground of delay and laches as the action of the respondents shocks conscience of the Court.

22. Therefore, the Writ petition is allowed; within six weeks from today, respondents shall demarcate the land of the petitioner which was utilized for the purpose of laying the above road after notice to the petitioner, treat it as having been acquired under the Land Acquisition Act, 1894 and pay him compensation which is maximum amount as determined in the Awards mentioned in para 10 of the Writ petition with all statutory benefits under the Land Acquisition Act, 1894 within two months of the demarcation of the land. Respondents shall also pay costs of this petition to the tune of Rs.10,000/- to the petitioner within 4 weeks.