

(2005) 01 SHI CK 0003

In the High Court Of Himachal Pradesh

Case No : C.W.P. No's. 1039 and 1040 of 2003

Budhi Ram alias Bidhi Chand and Others etc.

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 04-01-2005

Acts Referred:

Constitution of India, 1950 — Article 14, 300A

Citation : AIR 2006 HP 16 : (2005) 1 ShimLC 349

Hon'ble Judges : M.R. Verma, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : R.K. Sharma, for the Appellant; M.S. Chandel, General and D.C. Pathik, A.A.G., for the Respondent

Judgement

Arun Kumar Goel, J.—Heard learned Counsel for the parties and with their assistance record of the cases has also been examined.

2. Since identical questions of law and fact are involved in both these cases, as such these petitions were heard together and are being disposed of by this common judgment.

3. It is admitted case of the respondents that with a view to lay a wide net work of link roads connecting villages with the highways, Pradhan Mantri Gramin Sadak Yojana was started in the year 2000 by the Government of India. What is its effect on these two cases, will be noted hereinafter.

4. In both cases petitioners claim that while constructing Kuthera-Chalokhar to Patlandar and Banal via Ree Road in the year 1993, their lands were taken over. Over such lands part of the aforesaid road has been constructed there from. On a question of fact, learned Counsel for the parties were not at variance that no compensation for the lands of the petitioners was paid to them.

5. In this background, petitioners claim compensation for their lands out of which road has been constructed. They have also claimed interest on the amount payable to them. Their further case is that the action of the respondents is not

only illegal and arbitrary but is also violative of Articles 14 and 300-A of the Constitution of India. Reason being, that they have been deprived of their property without any authority of law.

6. In this background, they have prayed a issuance of for writ directing respondents to acquire land and pay compensation to them under law.

7. When put to notice, respondents have contested the claim of the petitioners and/ or their being entitled for payment of any compensation. According to them, construction of road was started as far back as in the year 1993. This was on persistent requests of Gram Panchayat, Ree for completing the road in question at the earliest. With a view to support this stand, learned Advocate General placed reliance on Annexures R-1 to R-7. These are resolutions passed by Gram Panchayat, Ree from time to time between 28-2-1992 to 24-5-1995.

8. Annexure R-8 is a letter dated 24-1-2001, addressed to the Executive Engineer," Public Works Department, Hamirpurt by the Gram Panchayat, Ree. Amongst other facts, it is mentioned in it that for construction of this road land was voluntarily given by the villagers at the time of its initial construction, therefore, prayer was made to the Executive Engineer for tarring it.

9. By referring to Annexure R-9, learned Advocate General clarified that funds are not provided for acquisition of land under the Pradhan Mantri Gramin Sadak Yojana, (PMGSY). To similar effect is Annexure R-10, a communication from the Chief Secretary to the Government of Himachal Pradesh addressed to different functionaries of the State for construction of roads under PMGSY.

10. While opposing the present writ petitions, learned Advocate General also laid great emphasis on an order dated 20-11-1996, passed by a Division Bench of this Court in CWP No. 966 of 1996. What is its effect, will be dealt with hereinafter. For ready reference this order is extracted hereinbelow :

The facts are in dispute. Hence the only proper remedy available to the petitioners is to approach the Civil Court and establish their rights. In such circumstances, the writ petition is dismissed.

11. Pradhan Mantri Gramin Sadak Yojana was started in the year 2000, as noted earlier. Therefore, stand of the respondents that the road in question was constructed under PMGSY, is an argument raised simply to be rejected. Rather a reference to the Annexures clearly shows that road had already been constructed long ago. What Is set out in paragraphs 3 and 5 in reply which are identical in terms of both these writ petitions, is extracted hereinbelow :

3. That the contents of para 3 are wrong hence denied. It is submitted that the road from Kuthera Chalokhar Patlander kachha one was constructed during the year 1993 and has been metalled and tarred under PMGSY and NABARD assistance during the years 2001-2002. The petitioners gave their verbal consent for construction of road and never raised any objection while it was constructed in the year 1993. The respondents were never served upon with any notice by

the petitioners as alleged in this para. The said letter/notice appears to have been fabricated now simply to wriggle out from implied consent which at the relevant time has been accorded, by petitioners.

5. That the contents of para 5 admitted to the extent that the road has been constructed through the land of the petitioners, but same was constructed with the consent of the petitioners. It is pertinent to mention here that most of land is barren and rocky and the same was not fit for agriculture purpose. The road has been constructed on the demand of the local people right from village Kutherea to Patlander which is about 15 Km in length connecting villages like Kuthera, Ubak, Muthan, Chowki, Bhatilay, Ghumarda, Chalokhar, Swal, Tikkar, Ree, Bhogolu, Bhagol, Chamarardi, Thana, Thara and Patlander. No compensation has been paid by the respondents as this road has been constructed/completed in all respects under Pradhan Mantri Gramin Sarak Yojna and NABARD assistance, wherein it has been clearly mentioned that Rural roads will be constructed in the areas where local people give their land free of cost. As per guidelines of PMGSY Para 6 (2) villagers should donate land free of cost and willingness of land owners would be obtained by way of Gram Sabha resolution through Gram Panchayat concerned. The copy of abstract of guidelines of PMGSY Scheme is annexed as R-9.

12. There is nothing produced on record to say that how, through whom and in what manner the so called "oral consent", was given by the petitioners. Nothing has been placed on record to suggest anything that at any point of time petitioners ever either gave their lands for construction of the road in question and/or ever voluntarily consented for it without claiming any compensation. If that was the true position, respondents in law were bound to have placed legally acceptable material on record to uphold this plea.

13. Except for placing reliance on the resolutions of Panchayat (Annexures R-1 to R-7) and letter dated 24-1-2001 (Annexure A-8) nothing has been brought on record by the respondents. In this view of the matter to say that the claim of the petitioners is either stale and/or they should have recourse to filing civil suit and establish their claim, would be diverting the course of justice as well as ignoring Article 14 and mandate of Article 300-A of the Constitution of India. It is true that right to property is not a fundamental right, but it is an acknowledged legal right that too under the Constitution, and not flowing from a contract between the parties under the Law of Contract.

14. Another reason to take this view is that construction of road from the land of the petitioners in both the cases is not in dispute. What is being disputed by the respondents, is that they have voluntarily consented to give land, when it was constructed that too without claiming any compensation. At the risk of repetition, it may be observed that in case respondents can satisfy the Court from the contemporaneous official record, both the petitions are bound to fail. Except for what is referred to hereinabove, no other material has been placed on record. Therefore, plea of Shri Chandel to the contrary is hereby rejected.

15. Now coming to the stand of the respondents that road in question has been constructed and has been tarred under PMGSY. No benefit can be derived by the petitioner from the scheme in question. Construction of road as per their own showing was finished much before the coming into force of this scheme. It was only tarred after the scheme came into existence. Therefore, no advantage can be derived by the respondents on this plea, which is also rejected.

16. Another plea urged for the dismissal of these petitions is based on the order of Division Bench of this Court dated 20-11-1996, referred to hereinabove. With respect, after having gone through this order we find it is neither precedent nor can be allowed to be referred to as such on behalf of the respondents. It is summary dismissal of the writ petition simply on the ground that facts are in dispute, therefore, only appropriate remedy to the petitioners is to approach the Civil Court and establish their right.

17. In the present cases, it was for the respondents, (who have to set out the plea of "oral consent" for construction of road without claiming any compensation for it), to have established by them. They could have supported the same prima facie establishing this plea and then to persuade the Court for dismissing these cases. We are further of the view that in case there was any such material available on the contemporaneous official record with the respondents, and the same having not been produced; consequently, adverse inference needs to be drawn against them by holding that in case such material had been produced, it would not have supported their plea. It is by now well known that Government and its functionalities do not speak like two individuals. There is thus no question of any "oral consent", being there on the part of the petitioners in these cases for having either voluntarily consented for the construction of road over their lands and/ or having further agreed not to claim any compensation.

18. A Division Bench of this Court by reasoned and speaking judgment in the case of Netar and Others Vs. Jagta, has elaborately dealt with almost identical situation based on the "oral consent" having been given by the persons interested (like petitioners in these two cases), for construction of road many years ago. Such plea was negated by the Division Bench.

19. Once the above conclusion is arrived at, action of the respondents in constructing Kuther-Chalokhar to Patlandar and Banal via Ree Road, without having recourse to law tantamounts to depriving the petitioners of their property and such action has no legal authority, muchless sanction behind it and it is declared as such.

20. No other point is urged.

21. In view of the aforesaid discussion, both these writ petitions deserve to be allowed and it is ordered accordingly. As a consequence of this respondents are now directed to initiate steps for acquisition of land of the petitioners over which part of Kuther Chalukhan to Patlandar and Banal via Ree Road has been constructed. Such steps will be initiated by the respondents latest by or before

30th April, 2005 and thereafter acquisition proceedings completed by or before 30th April, 2006. Direction regarding time frame is pre-emptory to be carried out by all concerned. Parties are left to bear their own costs.

22. For limited purpose of reporting compliance only, both these cases are ordered to be listed in the first week of May, 2006, affidavit of compliance will be filed by respondent No. 1 latest by 30th April, 2006.

CMP No. 305 of 2004.

No order, in view of the order passed in the main matter. Disposed of accordingly.