

(2012) 09 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Letters Patent Appeal No. 16 of 2005

Des Raj Sood

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 19(1)(g), 21, 226, 26(b)

Citation : (2013) 1 ShimLC 132

Hon'ble Judges : Rajiv Sharma, J;Deepak Gupta, J

Bench : Division Bench

Advocate : R.L. Sood, with Mr. Sanjeev Sharma, for the Appellant; Rajesh Mandhotra, D.A.G., for the Respondent

Judgement

Rajiv Sharma, J.—This Letters Patent Appeal is directed against the judgment, dated 18.08.2005 of the learned Single Judge, rendered in C.W.P. No. 315 of 1999. Material facts necessary for adjudication of this appeal are that the appellant-petitioner (hereinafter referred to as "the petitioner" for the sake of convenience) has purchased two adjoining pieces of land, measuring 1652 and 550 sq. mtrs., comprised in Khasra Nos. 788/2 and 789/2 vide registered sale deeds, dated 13.12.1972 and 22.1.1975. The mutation was also attested in favour of the petitioner bearing Nos. 41 and 65, respectively. The settlement operation took place in District Solan. During the course of settlement operation, the boundary "line Muqabla" Mohal Kather, Solan and Hamra Mohal Saproon was shifted and changed to the detriment of the petitioner, on the pretext that the boundary line between Mohal Kather, Solan and Hamra Mohal Saproon was till then a pencil/Kham (temporary) line. This order was also approved by the Deputy Commissioner-Cum-Settlement Officer, Solan, as per order dated 09.03.1982. In the process, the land of the petitioner, measuring 490 sq. mtrs. was transferred to the State Government. The mutation was also attested on 03.05.1982 bearing No. 145. The land in question was transferred to Block Development Officer, Solan. Similarly, the land of one Sh. Puran Singh and others, measuring 3762 sq. mtrs. was also transferred to the State Government.

On 29.03.1993, the Settlement Collector, Shimla came to the conclusion that in case the revenue staff had exercised due diligence, the serious situation would not have arisen. He gave a findings vide order dated 29.03.1993 that this was a mistake of the department and consequently, he permitted the petitioner to make an application to the Government for compensating him for the loss of his land from nearby Government land. The Financial Commissioner-Cum-Secretary (Revenue) to the Government of Himachal Pradesh has directed the Deputy Commissioner, District Solan, H.P. on 14.01.1994 to implement the decision rendered in Case No. 53/93, dated 29.03.1993. In sequel to Annexure P-7, dated 14.01.1994, the Deputy Commissioner, Solan recommended the case of the petitioner to Deputy Commissioner, Shimla on 30.03.1994. The relevant text of letter dated 30.03.1994 reads thus:

The matter has been got examined by the field staff. Govt. Khasra No. 1110/268/1 measuring 811 sq. mtr. Vaka Mohal Basal, Patti Kather is in the allotable pool and there is no tree, thoroughfare, water spring etc. upon this land. But the residents of area have raised objection for the transfer of this land. Their version is that they have ancestral rights over this land and they are cutting grass from this land. But it is evident from the revenue records that the proposed land is in the allotable pool and as such the State Government, is competent for its utilization. In such a situation the objection raised by the residents of the area can be overlooked and the Government can take a decision to give 811 sq. mtrs. land in Khasra No. 1110/268/1 Vaka Mauja Basal, Patti Kather, Tehsil Solan.

2. The Deputy Commissioner has recommended that the petitioner be given 811 sq. mtrs. land in Khasra No. 1110/268/1, situated in Vaka Mauja Basal, Patti Kather, Tehsil Solan. The Deputy Commissioner, Solan sent another communication to the Divisional Commissioner, Shimla on 06.07.1994. The relevant text of the letter, dated 06.07.1994 reads thus:

Regarding objection by the residents and Panchayat of Basal, it is pointed out that the office of Block Development Officer, Solan has been constructed by the Govt. on the land of Shri D.R. Sood. To give land to Sh. D.R. Sood in exchange of that land shall amount to settle the matter legally. Since Sh. Sood is asking for land in lieu of his land, this can be done by giving him land in the nearby Mohal Basal. There is no other land in allotable pool in any other Mohal in Solan which can be given to Sh. Sood in exchange. Regarding objections of the residents and Panchayat Basal, the position had been clarified vide this office letter No. Peshi/10-Misc/94, dated 30.3.94 that the proposed land is in the allotable pool and as such State Government is competent for its use. In such a situation the objections of the residents and Panchayat can be overlooked and Government can take a decision to give land to Sh. Sood in Khasra No. 1110/268/1, measuring 811 sq. mtr., Mohal Basal, Patti Kather, Solan in exchange of his lost land. Copy of object is enclosed.

3. The Additional Deputy Commissioner, Solan sent a copy of Tatima alongwith

Ikhtraj and annual rate in respect of the Government land and for the proposed land to be given to the petitioner on 28.10.1994. The Divisional Commissioner, Shimla recommended the case of the petitioner to the State Government on 19/21.11.1994. Thereafter, the Financial Commissioner-Cum-Secretary (Revenue), Government of Himachal Pradesh conveyed the decision to the Deputy Commissioner, Solan, District Solan, Himachal Pradesh that the petitioner be granted the land in exchange with the nearby Government land, measuring 490 sq. mtrs., which he lost as a result of "line muquabala" of the two revenue estates Mohal Kather and Saproon, as has been suggested by the Settlement Collector, Shimla Division, Shimla vide his order in case No. 53/93, dated 29.03.1993. Thereafter, the petitioner made a representation to the Financial Commissioner-Cum-Secretary (Revenue) on 16.09.1995 for the implementation of the decision of the Settlement Collector. Consequently, the Revenue Minister also ordered that the petitioner should be given land in exchange as per order of the Settlement Officer, Shimla on equivalent value basis (latest average rates for 1994-95) on 23.09.1995. The Financial Commissioner-Cum-Secretary (Revenue), Government of Himachal Pradesh conveyed the decision to the Deputy Commissioner, Solan, District Solan on 19.04.1996 that an area of 490 sq. mtrs. out of Khasra No. 1110/263, situated in Village Basal Patti Khater, Tehsil & District Solan be granted in exchange in favour of the petitioner, in lieu of his land measuring 490 sq. mtrs. Petitioner made a representation against the decision dated 19.04.1996 on 09.05.1996. Thereafter, the Financial Commissioner-Cum-Secretary (Revenue), Government of Himachal Pradesh conveyed to the Deputy Commissioner, Solan, District Solan on 19.11.1996 that the Tatima etc. of the land proposed to be allotted to the petitioner in lieu of his lost land measuring 490 sq. mtrs. be prepared on the basis of market value of the land lost. However, the Deputy Commissioner, Solan, District Solan, without implementing the decision, as conveyed to him by the Financial Commissioner-Cum-Secretary (Revenue) proposed the exchange of the land of the petitioner with Khasra No. 1424 in village Saproon. The petitioner was informed on 04.08.1997 that the Block Development Officer, Solan has refused to accept the offer of exchange of land of the petitioner with Khasra No. 1424 in Saproon. Petitioner was called upon by the Deputy Commissioner to contact Tehsildar, Solan. The Tehsildar, Solan, as per the averments made in the petition, prepared all the documents for exchange of land.

4. However, the fact of the matter is that in the meantime, the petitioner has filed C.W.P. No. 630 of 1998 in this Court for the redressal of his grievance. The State Government as per affidavit filed vide Annexure P-27, averred that the petitioner has already been allotted 495 sq. mtrs. of land from Khasra No. 1424/1, situated in Mauza Saproon, Tehsil and District Solan and the mutation was also attested bearing No. 1261, dated 21.01.1999. Thereafter, the petitioner filed C.W.P. No. 315 of 1999 for quashing the allotment of land comprised in Khasra No. 1424/1, measuring 495 sq. mtrs., situated in Mauza Saproon, Tehsil and District Solan, with a further prayer to direct respondents No. 1 and 2 to

allot the petitioner 1795 sq. mtrs. of land (to be calculated on the basis of the market value of the original land belonging to the petitioner) out of the Government land in allottable pool, comprised in Khata Khatauni No. 532/1211, Khasra No. 1110/268, situated in Mauza Basal, Patti Kather, District Solan, as per Jamabandi for the year 1989-90, which is now denoted as land comprised in Khata Khatauni No. 666/1460, Khasra No. 2277/1110/268, situated in Mauza Basal, Patti Kather, District Solan, H.P. Learned Single Judge vide judgment, dated 18.08.2005, dismissed C.W.P. No. 315 of 1999. Hence, this Letters Patent Appeal.

5. Mr. R.L. Sood, learned Senior Advocate has vehemently argued that the petitioner has been deprived of his prime land, measuring 490 sq. mtrs., which was adjacent to National High Way without authority of law. He then argued that the rights of the petitioner has crystallized on the basis of the order passed by the Settlement Collector, Shimla on 29.03.1993 in Case No. 53/93. He also contended that once a decision has been taken by the highest authority, the respondents are estopped from changing their stand. He also contended that all the statutory authorities have recommended the case of the petitioner for exchange of his land with the land of equal market value in Village Basal. He also contended that the learned Single Judge has erred in law by assuming that the land in favour of the petitioner has been ordered to be exchanged by the orders of the Revenue Minister. In other words, his statement is that Revenue Minister has only ordered that the decision of the Settlement Collector, dated 29.03.1993 be complied with. He lastly contended that in case it was not possible for the State Government to duly compensate the petitioner by exchanging his land at village Basal, the land of the petitioner be ordered to be acquired in accordance with law.

6. Mr. Rajesh Mandhotra, learned Deputy Advocate General has supported the judgment of the learned Single Judge, dated 18.08.2005. According to him, there is no arbitrariness or illegality in the action of the respondent-State, whereby the petitioner has been allotted land, measuring 495 sq. mtrs. of Khasra No. 1424/1, situated in Mauza Saproon.

7. We have heard the learned Counsel for the parties and gone through the pleadings and the judgment of the learned Single Judge carefully.

8. What emerges from the facts stated hereinabove, is that petitioner's land measuring 490 sq. mtrs. has been transferred to the State Government on the basis of the shifting of boundary line between Mohal Kather, Solan and Hamra Mohar Saproon. Petitioner has acquired a valuable right when he has purchased the land vide sale deeds, dated 13.12.1972 and 22.01.1975. The mutation of the same was also attested in favour of the petitioner. The petitioner has not been heard before the decision was taken to deprive him of the valuable piece of land, situated adjacent to National Highway, measuring 490 sq. mtrs. Petitioner has suffered civil consequences. The Revenue Department without informing the petitioner, has also transferred this land to the Office of Block Development

Officer, Solan and the same was mutated on 03.05.1982. It is in these circumstances that the Settlement Collector, Shimla has passed an equitable order on 29.03.1993 to compensate the petitioner by exchanging his land with the land of the State Government from allotable pool. Case of the petitioner has been favourably recommended by the Deputy Commissioner and Divisional Commissioner as well. The Deputy Commissioner and Divisional Commissioner have made recommendations for exchange of petitioner's land at village Basal by taking into consideration the escalation of the price of the land of the petitioner, measuring 490 sq. mtrs. adjacent to the National Highway. The Revenue Minister has already endorsed the recommendations made by the Settlement Collector, Deputy Commissioner, Solan and Divisional Commissioner, Shim la. On 19.4.1996, the Financial Commissioner-Cum-Secretary (Revenue) directed the Deputy Commissioner to compensate the petitioner by allotting him 490 sq. mtrs. of land in exchange of his land, which was situated in mauza Kather. However, this decision was changed by the Financial Commissioner-Cum-Secretary (Revenue), as is evident from letter, dated 19.11.1996, whereby the Deputy Commissioner has been directed to compensate the petitioner by considering his case on the basis of market value of the land. Though there was specific direction from the office of the Financial Commissioner-Cum-Secretary Revenue to allot the land to the petitioner in exchange, however, the Deputy Commissioner at his own level has exchanged the land from Khasra No. 1424/1, situated in Mauza Saproon. However, the fact of the matter is that this proposal was not accepted by the Block Development Officer and the petitioner was also informed of the same on 06.11.1997. Petitioner has been making earnest efforts that he may be duly compensated by granting him the land of equal market value in village Basal. The Tehsildar has also prepared the papers after the petitioner has received letter dated 06.11.1997 from the Deputy Commissioner to contact the Tehsildar.

9. It has come in the affidavit filed by the State Government in C.W.P. No. 630/98 that the petitioner has been allotted land, measuring 495 sq. mtrs. out of Khasra No. 1424/1, situated in Mauza Saproon and the mutation has also been attested in favour of the petitioner bearing No. 1261, dated 21.01.1999.

10. Petitioner should have been heard before the decision was taken unilaterally, transferring the land to the petitioner, situated in Khasra No. 1424/1 from Mauza Saproon. The petitioner has been legitimately expecting that the land would be allotted to the petitioner as per the decision taken by the Settlement Collector, Shimla, recommendations earlier made by the office of the Deputy Commissioner, read in conjunction with the recommendations made by the Divisional Commissioner and the decision conveyed to the Deputy Commissioner by the Financial Commissioner-Cum-Secretary (Revenue), Government of Himachal Pradesh. But, to the contrary, the petitioner has been allotted land measuring 495 sq. mtrs. at village Saproon instead at village Basal. According to Mr. R.L. Sood, learned Senior Counsel for the appellant this land is not situated adjacent to the National Highway and is situated in a khad.

11. It is not disputed by the respondent-State that the land of the petitioner was situated adjacent to the National Highway. It is a prime land. The State Government has also constructed the office of Block Development Officer on this land. The petitioner cannot be permitted to be deprived of his valuable constitutional right to property, as enshrined under Article 300-A of the Constitution of India. Though the right to property is no more a fundamental right, but it is a constitutional right. A person cannot be deprived of the property, save in accordance with law. The respondents have failed to point out how the petitioner could be deprived of his land, that too, measuring 490 sq. mtrs. adjacent to the National Highway. The orders passed by the Settlement Officer on 29.03.1993 were equitable. The petitioner has been deprived of his land in negation of rule of law.

12. Their Lordships of the Hon"ble Supreme Court in K.T. Plantation Pvt. Ltd. and Another Vs. State of Karnataka, have held that Article 300-A proclaims that no person can be deprived of his property save by authority of law. Their Lordships have held as under:

131. Right to life, liberty and property were once considered to be inalienable rights under the Indian Constitution, each one of these rights was considered to be inextricably bound to the other and none would exist without the other. Of late, right to property parted company with the other two rights under the Indian Constitution and took the position of a statutory right. Since ancient times, debates are going on as to whether the right to property is a "natural" right or merely a creation of "social convention" and "positive law" which reflects the centrality and uniqueness of this right. Property rights at times compared to right to life which determine access to the basic means of sustenance and considered as prerequisite to the meaningful exercise of other rights guaranteed under Article 21.

132. Eminent thinkers like Hugo Grotius, Pufendorf, John Locke, Rousseau and William Blackstone had expressed their own views on the right to property. Lockean rhetoric of property as a natural and absolute right but conventional in civil society has, its roots in Aristotle and Aquinas, for Grotius and Pufendorf property was both natural and conventional. Pufendorf, like Grotius, never recognised that the rights of property on its owners are absolute but involve definite social responsibilities, and also held the view that the private property was not established merely for the purpose "allowing a man to avoid using it in the service of others, and to brood in solitude over his hoard or riches." Like Grotius, Pufendorf recognised that those in extreme need may have a right to the property of others. For Rousseau, property was a conventional civil right and not a natural right and private property right was subordinate to the public interest, but Rousseau insisted that it would never be in the public interest to violate them.

166. Article 300-A, when examined in the light of the circumstances under which it was inserted, would reveal the following changes:

1. Right to acquire, hold and dispose of property has ceased to be a fundamental right under the Constitution of India.
2. Legislature can deprive a person of his property only by authority of law.
3. Right to acquire, hold and dispose of property is not a basic feature of the Constitution, but only a Constitutional right.
4. Right to Property, since no more a fundamental right, the jurisdiction of the Supreme Court under Article cannot be generally invoked, aggrieved person has to approach the High Court under Article 226 of the Constitution.

168. Article 300-A proclaims that no person can be deprived of his property save by authority of law, meaning thereby that a person cannot be deprived of his, property merely by an executive fiat, without any specific legal authority or without the support of law made by a competent legislature. The expression "Property" in Article 300-A confined not to land alone, it includes intangibles like copyrights and other intellectual property and embraces every possible interest recognised by law,

170. Article 300-A, therefore, protects private property against executive action. But the question that looms large is as to what extent their rights will be protected when they are sought to be illegally deprived of their properties on the strength of a legislation. Further, it was also argued that the twin requirements of "public purpose" and "compensation" in case of deprivation of property are inherent and essential elements or ingredients, or "inseparable concomitants" of the power of eminent domain and, therefore, of entry 42, List III, as well and, hence, would apply when the validity of a statute is in question.

190. Article 300-A would be equally violated if the provisions of law authorizing deprivation of property have not been complied with. While enacting Article 300-A Parliament has only borrowed Article 31(1) [the "Rule of law" doctrine] and not Article 31(2) [which had embodied the doctrine of Eminent Domain]. Article 300-A enables the State to put restrictions on the right to property by law. That law has to be reasonable. It must comply with other provisions of the Constitution. The limitation or restriction should not be arbitrary or excessive or what is beyond what is required in public interest. The limitation or restriction must not be disproportionate to the situation or excessive.

191. The legislation providing for deprivation of property under Article 300-A must be "just, fair and reasonable" as understood in terms of Articles 14, 19(1) (g), 26(b), 301, etc. Thus in each case, Courts will have to examine the scheme of the impugned Act, its object, purpose as also the question whether payment of nil compensation or nominal compensation would make the impugned law unjust, unfair or unreasonable in terms of other provisions of the Constitution as indicated above.

211. Rule of law as a concept finds no place in our Constitution, but has been characterized as a basic feature of our Constitution which cannot be abrogated or

destroyed even by the Parliament and in fact binds the Parliament. In Kesavanda Bharati's case (supra), this Court enunciated rule of law as one of the most important aspects of the doctrine of basic structure. Rule of law affirms parliament's supremacy while at the same time denying it sovereignty over the Constitution.

212. Rule of law can be traced back to Aristotle and has been championed by Roman jurists; medieval natural law thinkers; Enlightenment philosophers such as Hobbes, Locke, Rousseau, Montesquieu, Dicey etc. Rule of law has also been accepted as the basic principle of Canadian Constitution order. Rule of law has been considered to be as an implied limitation on Parliament's powers to legislate.

218. Rule of law as a principle, it may be mentioned, is not an absolute means of achieving the equality, human rights, justice, freedom and even democracy and it all depends upon the nature of the legislation and the seriousness of the violation. Rule of law as an overarching principle can be applied by the constitutional Courts, in rarest of rare cases, in situations, we have referred to earlier and can undo laws which are tyrannical, violate the basic structure of our Constitution, and our cherished norms of law and justice. One of the fundamental principles of a democratic society inherent in all the provisions of the Constitution is that any interference with the peaceful enjoyment of possession should be lawful.

142. Let the message, therefore, be loud and clear, that rule of law exists in this country even when we interpret a statute, which has the blessings of Article 300-A.

13. Case of the petitioner has rightly been recommended by the Deputy Commissioner and Divisional Commissioner. These authorities were aware of the value of the land adjacent to National Highway, that is why, they have recommended that the petitioner should have been allotted land by way of exchange more than 490 sq. mtrs. from allotable pool from village Basal. It is also not understandable that once the Block Development Officer has refused to accept the offer, how the same land could be made available to the petitioner far away from the National High Way. The petitioner's land has been transferred to the State Government and utilized by the State Government, based on the mistakes committed by the revenue staff by shifting the boundaries of two Mohals. The State Government cannot be permitted to take advantage of its own wrong by depriving the petitioner of his property and then not to compensate him.

14. The petitioner has purchased the plot on 22.1.1975 and could not use the same since the land has been transferred in the name of Rural Development and the mutation has also been attested on 03.05.1982. The action of the respondent-State to deprive the petitioner of his constitutional right to hold the property and not to compensate him, is arbitrary and unreasonable, thus,

violative of Article 14 of the Constitution of India.

15. Now, the question which has arisen before us, is that how the petitioner at this stage can be compensated for the unconstitutional action of the respondent-State? The petitioner cannot be put back in possession of the land measuring 490 sq. mtrs., since the building has already been constructed on the same. The allotment of the land to the petitioner, measuring 495 sq. mtrs. by way of exchange from Mohal Saproon is not of the same market value vis-a-vis the land measuring 490 sq. mtrs, situated adjacent to National Highway. The possession of the State Government at this belated stage cannot be disturbed, more particularly, when the building has been constructed on the land. However, we are of the considered view that the petitioner is required to be duly compensated by the State Government for utilizing his land without authority of law by acquiring the land in accordance with law. Accordingly, in view of the observations and discussions made hereinabove, the Letters Patent Appeal is allowed. The judgment of the learned Single Judge, dated 18.08.2005, is quashed and set aside. The respondent-State is directed to acquire the land measuring 490 sq. mtrs. under the Land Acquisition Act, 1894, comprised in Khasra No. 789/2 (old) and to complete the process within a period of one year from today. The pending application(s), if any, also stands disposed of. No costs.