

(2013) 09 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 4208 of 2010

Dillu Ram and Others

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 11-09-2013

Acts Referred:

Citation : (2013) 3 ShimLC 1606

Hon'ble Judges : Dharam Chand Chaudhary, J;Dev Darshan Sood, J

Bench : Division Bench

Advocate : G.S. Rathore, for the Appellant; V.S. Chauhan, Additional Advocate General and Mr. Vikram Thakur, D.A.G., for the Respondent

Judgement

Dev Darshan Sood, J.—In this writ petition, the petitioners claim compensation for the land which has been utilized by the respondents-State without payment of compensation in accordance with law. The case was listed to be taken up after decision in Shankar Dass v. State of H.P. and others connected matters, 2013(2) Him.L.R. (FB) 698, which was a reference made to the Full Bench to consider the parameters within which compensation for land utilized by the State could be granted in writ proceedings. By majority, the Division Bench of this Court holds.-- In cases where the State has not taken steps under the Land Acquisition Act for the purpose of construction of roads on the ground that the required land had been willingly surrendered either orally or otherwise or with implied or express consent by the owners at the relevant time, they can invoke the jurisdiction refuting such express or implied consent or the stand of the State on voluntary surrender, only within the time within which such a relief can be claimed in a Civil Suit. Once such a question is thus raised in a Writ Petition the same can be considered in the Writ Petition itself.

From the pleadings, we find that according to the case set out by the petitioners, the land belonging to them was utilized by the respondents for the construction of Deori-Khaneti road in the year 1990. The stand of the respondent-State, on the other hand, is that before starting the construction work of Deori-Khaneti

road the petitioners raised no objection but rather verbally consented/did not object to the construction so made.

2. From the pleadings, we find that serious disputed questions of law and fact arise for determination of the starting point of limitation, which, it is not possible to adjudicate in writ proceedings. The appropriate remedy for the petitioners would be to institute a civil suit in accordance with Shankar Dass's case *supra*, to establish the claim as pleaded. In these circumstances, this writ petition is disposed of with liberty to the petitioners to institute a civil suit in accordance with law and the ratio in Shankar Dass's case *supra*.

3. We do not pronounce on the merits of the case of either party. We also direct that if such suit is filed, the period spent by the petitioners in pursuing the writ remedy before this Court shall obviously be excluded for calculation of period of limitation, if disputed. Petition stands disposed of. All pending miscellaneous applications also stand disposed of.