

(2019) 05 SHI CK 0039
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 196 Of 2018

Indian Meteorological Department

APPELLANT

Vs

Miss Asha Pandit And Others

RESPONDENT

Date of Decision : 23-05-2019

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 17, 48
Code Of Civil Procedure, 1908 — Section 47
General Clauses Act, 1897 — Section 17 (1), 21

Citation : (2019) 05 SHI CK 0039

Hon'ble Judges : Tarlok Singh Chauhan, J

Bench : Single Bench

Advocate : Shashi Shirshoo, M.A. Khan, Hem Kanta Kaushal, Vinod Thakur,
Sudhir Bhatnagar, Svaneel Jaswal

Final Decision : Dismissed

Judgement

Tarlok Singh Chauhan, J

1. "Whether in a case where possession of the land has been taken under Sections 16 and 17 of the Land Acquisition Act, 1894 (for short 'Act'), can the application for release of land from acquisition still be held to be maintainable"?, is the short question which arises for consideration in the instant revision petition.

2. However, before answering the question, certain minimal facts need to be noticed.

3. The land of respondent No.1 measuring 8513.89 sq. mtrs. Comprising in Khata Khatauni No.3/5, Khasra Nos. 90 to 102, Kitas 13, situated in Mohal Jakhu, Tehsil and District Shimla, H.P. was acquired by respondents No. 2 and 3 for the benefit of the petitioner for installation of "C-Band Dopplers Radar and Meteorological Centre". After completion of all necessary formalities under the Act, the Land Acquisition Collector passed his award on 8.6.2011 thereby awarding flat rate of compensation of Rs.4573.13 paise per square meter.

4. The award was assailed by respondent No.1 before the learned Reference Court and the same was allowed on 7. 6.2017 and the compensation was enhanced to Rs.12,812/- per square meter alongwith all consequential benefits.

5. The award so passed by learned Reference Court is subject matter of RFA No.9788 of 2018, which is still pending adjudication before this Court. In the meanwhile, after passing of the award by the learned Reference Court, respondent No.1 filed an Execution Petition seeking implementation of the award passed by the learned Reference Court on 7.6.2017.

6. The petitioner filed objections under Section 47 of the Code of Civil Procedure mainly on the ground that the petitioner was no longer interested in retaining the land and the same was lying un-utilised and the State of Himachal Pradesh was free to take over the land and use it for other purposes as it may consider fit. The objections so filed by the petitioner came to be dismissed by learned Executing Court on 3. 8.2018, constraining the petitioner to file the instant revision petition.

7. It is vehemently argued by Mr. Shashi Shirshoo, learned Central Government Counsel for the petitioner that once the Government had power to issue notification for acquiring the land, it had the power to cancel the notification under Section 21 of the General Clauses Act. Even though, the arguments on the face of it appears to be attractive, but there is no merit in the same.

8. Identical question came up for consideration before the Hon'ble Supreme Court in LT. Governor of Himachal Pradesh vs. Sri Avinash Sharma 1970 (2) SCC 149, wherein it was clearly held that after possession has been taken pursuant to a notification under Section 17 (1), the land is vested in the Government and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Rather it was held that any other view would enable the State Government to circumvent the specific provision by relying upon a general power. It was also held that when the possession of the land is taken under Section 17 (1) of the Act, the land vests in the Government and there is no provision by which the land statutorily vested in the Government reverts to the original owner by mere cancellation of the notification. It is apposite to refer to the relevant observations as contained in para-8 which reads thus:

"8....It is clearly implicit in the observations that after possession has been taken pursuant to a notification under Section 17 (1) the land is vested in the Government, and the notification cannot be cancelled under Section 21 of the General Clauses Act, nor can the notification be withdrawn in exercise of the powers under Section 48 of the Land Acquisition Act. Any other view would enable the State Government to circumvent the specific provision by relying upon a general power. When possession of the land is taken under Section 17 (1), the land vests in the Government. There is no provision by which land statutorily vested in the Government reverts to the original owner by mere cancellation of

the notification."

9. Similar reiteration of law can be found in the following judgments of the Hon'ble Supreme Court:

(i) Rajasthan Housing Board and others vs. Shri Kishan and others (1993) 2 SCC 84 ;

(ii) Satendra Prasad Jain and others vs. State of U.P. and others (1993) 4 SCC 369 ;

(iii) Bangalore Development Authority and others vs. R. Hanumaiah and others (2005) 12 SCC 508;

(iv) V. Chandrasekaran and another vs. Administrative Officer and others (2012) 12 SCC 133;

(v) K.N.Aswathnarayana Setty (dead) through legal representatives and others vs. State of Karnataka and others (2014) 15 SCC 394; and

(vi) Uma Shankar and others vs. R. Hanumaiah (since deceased) through his Legal Representatives and others (2017) 14 SCC 335.

10. Thus, what can be taken to be a settled legal proposition is that the land once acquired cannot be restored to the tenure-holders/persons interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. The proceedings cannot be withdrawn/ abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances.

11. What essentially follows is that in case possession of the land has been taken, then the application for release of land from acquisition is not maintainable. Once the land is vested in the State free from encumbrances, it cannot be divested.

12. Admittedly, in the instant case the possession of the suit land has been taken from respondent No.1 and consequently, the land has vested in the State free from all encumbrances, it cannot be now divested.

13. The question as posed being no longer resintegra in view of the various authoritative pronouncements of the Hon'ble Supreme Court, as referred to above, is answered against the petitioner.

14. Consequently, there is no merit in this revision petition and the same is accordingly dismissed, so also the pending application(s) if any.