
(2015) 11 SHI CK 0066
In the High Court Of Himachal Pradesh
Case No : CWP No. 943 of 2008

Ishwar Singh Rawat

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 27-11-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2015) 11 SHI CK 0066

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Sameer Thakur, Advocate vice O.P. Thakur, Advocate, for the Appellant; Virender Verma, Additional Advocate General and Pushpinder Jaswal, Deputy Advocate General, for the Respondent

Final Decision : Partly Allowed

Judgement

Dharam Chand Chaudhary, J.—This petition has been filed with the following prayer:--

"It is prayed that respondents may kindly be taken to task by issuing a writ of mandamus compelling them either to acquire as per law or to handover to the petitioner the peaceful possession of his landed property comprising Khasra No. 1606/2 measuring 110 Sq.m. situated in up-Mohal Sarswati Nagar, Tehsil Jubbal, Distt. Shimla with appropriate compensatory cost for depriving him the free use of the property for over a period of about 23 years. Respondents be also punished for flagrant violation of the writ direction vide (P1). Any other or further writ, direction or order, deemed proper in the given premise, be kindly issued in the interest of justice."

2. The petitioner admittedly was owner of the land bearing Khasra No. 1606 measuring 0-09-18 hectare situated in Patwar Circle Saraswati Nagar, Tehsil Jubbal, District Shimla. The respondents-State allegedly constructed "Saraswati Nagar Anti Road" over this land during the year 1984-85 without acquiring the

same. The petitioner filed CWP No. 126 of 1996 in this Court seeking a direction to the respondents either to acquire the land in question and pay adequate compensation to him or in the alternative to allot this much area to him contiguous to the other land owned by him. A Co-ordinate Bench of this Court disposed of the writ petition vide judgment Annexure P1 with the following directions:

"Since the respondents have constructed the road in a part of the land belonging to the petitioner measuring as 0-09-18 hectare metres comprising Khasra No. 1606 without having acquired the same or without allotting alternative land to the petitioner, the present writ petition is allowed and the respondents are directed to acquire the land coming under the road comprising in khasra No. 1606 under the provisions of the Land Acquisition Act by initiating and completing such process within six months from today and to pay compensation therefor to the petitioner as per the law."

3. The respondents, however, have agitated the matter in the Supreme Court by filing Special Leave Petition to appeal (Civil) No. 11259 of 2003. The Apex Court has been pleased to dismiss the same on 8.1.2004. The review petition filed by the respondents was also dismissed by the Apex Court on 28.4.2004. Thereafter the respondents filed a suit in the Court of Civil Judge (Junior Division), Jubbhal for seeking declaration to the effect that the judgment Annexure P1 supra is void ab initio, being outcome of concealment of facts and collusion between the defendants. The petitioner preferred a petition registered as CMPMO No. 406 of 2004 with a prayer to quash proceedings in the suit, which was admitted by Hon"ble The Chief Justice's Bench on 23.6.2006 with the following observations:

"This, notwithstanding the fact that the aforesaid judgment by this Court was confirmed by their Lordships of the Supreme Court in a Special Leave Petition filed by the State, and also notwithstanding the fact that the Review Petition filed by the State against the order passed by the Supreme Court in the aforesaid Special Leave Petition was also rejected.

The subject matter of the aforesaid suit undoubtedly is the same as the subject matter of CWP No. 126 of 1996 was.

Why did the State adopt this unusual and extraordinary course of action in going to a Civil Court of the lowest jurisdiction for challenging a judgment passed by this Court (and affirmed by the Supreme Court) is something which I am at a total loss to understand and appreciate.

However, since reply has not been filed, I have no option but to admit this petition.

The petition is admitted. Reply post admission be filed in three months. Rejoinder, if any, thereto in two months thereafter."

4. It is, however, during the pendency of the petition (supra) the respondents-State has decided to withdraw the suit. The suit, as such, was dismissed as

withdrawn and the petition CMPMO No. 406 of 2004 also came to be disposed of vide judgment dated 14.12.2010.

5. Since the respondents-State failed to acquire the land as directed vide judgment Annexure P1, the petitioner had to file Contempt Petition (Civil) No. 10 of 2004 to which the respondents filed reply Annexure P3 and not only tendered unconditional apology but also informed the Court that the proceedings to acquire the land were already initiated. Thus the proceedings for contempt of this Court as initiated were dropped and the notice discharged vide order dated 18.5.2004 Annexure P3-A. The award Annexure P4 shows that in the notification under Section 4 of the Land Acquisition Act the entire land measuring 0-09-18 hectare (918 Sq. metres) was proposed to be acquired. However, later on only a portion thereof measuring 0-08-08 hectare (808 Sq. metres) has been acquired leaving 00-01-10 hectare (110 Sq. metres) from acquisition. Anyhow, as noticed supra, out of the total land, land measuring 0-08-08 hectare has since been acquired and as regards the compensation according to learned Counsel representing the petitioner, the proceedings qua enhancement thereof are still pending in appeal in this Court.

6. The dispute herein is qua the remaining land i.e. 110 square feet (00-01-10 hectare). As per entries in the jamabandi for the year 2004-2005, Annexure P5 the entire land bearing Khasra No. 1606 has been shown to be in the ownership of the petitioner, whereas in possession of respondent No. 2. Anyhow, the entries below remark column of this document reveal that mutation of land measuring 0-08-08 hectare alone denoted by Khasra No. 1606/2 has been attested and sanctioned in favour of respondent No. 2. However, so far as the possession is concerned, it is the State-respondents have been shown to be in possession of the entire land measuring 00-09-18 hectare.

7. Annexure P6 is the demarcation report prepared by Assistant Collector IInd Grade, Jubbal on an application for demarcation of the land bearing Khasra No. 1606/2 measuring 0-01-10 hectare (110 square metres) by the petitioner. As per this report, the road passes through this land also, meaning thereby that the left out land measuring 0-01-10 hectare is also under the road. The respondent No. 1 in reply to the writ petition though has admitted the demarcation of the land bearing Khasra No. 1606/2 conducted by Assistant Collector IInd Grade, Jubbal, however, maintained silence qua the authenticity and genuineness of the demarcation report Annexure P6. Silence on the part of the said respondent amount to admission. On the other hand, respondent 2 in reply to para-10 has come forward with the version that land bearing Khasra No. 1606/2 measuring 110 Sq. metres is not needed for the construction of the road.

8. Learned Additional Advocate General has pointed out that "Saraswati Nagar Anti Road" is now under National High Way Authority of India and as such, it is for the said Authority to decide as to whether the land is required for the road or not. He also intends to place on record the site plan to show that the land bearing Khasra No. 1606/2 in triangular shape is not being used for the road in

question. The land at the relevant time was acquired for construction of "Saraswati Nagar Anti Road" a State road/highway and not for construction of a National High Way. In case the road now has been declared as National High Way, it is for the respondents to settle the matter with National High Way Authority and the petitioner on this score cannot be allowed to suffer any further. Similarly the site plan now intended to be placed on record cannot be entertained as on the previous date, after hearing the arguments for some time, the matter was adjourned on the request of Learned Additional Advocate General to seek instructions. Thus if the site plan was to be placed on record appropriate application for seeking permission in this regard should have been filed. Otherwise also, if the same is intended to be placed on record merely to show the shape and location of the left out land on the spot and if the same is not required for the road in question, the document sought to be placed on record is not a material document to decide the present controversy because as per the alternative prayer of the petitioner in case this land is not required by the respondents, the vacant possession thereof has to be handed over to the petitioner with compensatory costs as determined by this Court on account of the loss he suffered after having been deprived from free use thereof.

9. Be it stated that as per the judgment Annexure P1, a direction was issued to the respondents to acquire the land out of Khasra No. 1606 coming under the road in accordance with the provisions contained under the Land Acquisition Act. Respondents have consequently acquired 0-08-08 hectare (808 Sq. metres) land out of Khasra No. 1606 which has been denoted by Khasra No. 1606/1. The left out area is 0-01-10 hectares (110 Sq. metres). Over the same, also the road is in existence as per the demarcation report Annexure P6. The response of respondent No. 2 in reply to the writ petition, however, is that the land bearing Khasra No. 1606/2 is not required for the road in question. No doubt, as per further response of respondent No. 2 the land measuring 110 sq. metres bearing Khasra No. 1606/2 is not in the physical possession of the respondents-department. The facts, however remain that there exists a road thereon as per the demarcation report Annexure P6. There is no reason to disbelieve the authenticity and genuineness of this report. As per the entries in the jamabandi Annexure P5 the entire land bearing Khasra No. 1606 has been shown in the possession of respondent No. 2. Therefore, the land in question is not in the possession of petitioner. He, therefore, is entitled to the possession thereof because the same is not required to be used by the respondents for the road in question.

10. Now adverting to the compensatory costs claimed, no case is made out that the petitioner is entitled to the damages for the last 23 years or 28 years, as argued by learned Counsel for the respondents because that there is nothing on record to show that the petitioner before filing this writ petition has agitated the matter qua unlawful use or possession of the land in question by the respondents in any proceedings initiated in accordance with law. Therefore, the petitioner is not entitled to compensatory costs as he claimed in the writ petition. At the

most, he, however, is entitled to such costs from the date of institution of the writ petition in this Court. In the absence of any proof qua the loss he actually suffered, by way of guess work, a sum of Rs. 10,000/- is assessed as the loss he having suffered and awarded as compensatory costs against the respondents.

11. In view of what has been said hereinabove, this petition succeeds and the same is accordingly allowed together with compensatory costs i.e. Rs. 10,000/-. There shall be a direction to the respondents to hand over the vacant possession of the land measuring 0-01-10 hectare (110 Sq. metres) bearing Khasra No. 1606/2 situated in Mauja Saraswati Nagar, Tehsil Jubbal, District Shimla to the petitioner within four weeks from the date of production of certified copy of this judgment by the petitioner, failing which to pay interest @ 9% interest on the costs so imposed till the possession is delivered. The respondent No. 1 shall also ensure that the revenue entries qua this land are changed in the name of the petitioner and his name is shown in the revenue record as owner in possession thereof.

12. The writ petition is accordingly disposed of. Pending application(s), if any, also stands disposed of.