

(2011) 09 SHI CK 0038
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1598 of 2008

Jai Ram

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 14-09-2011

Acts Referred:

Constitution of India, 1950 — Article 300A

Citation : (2011) 3 ShimLC 91

Hon'ble Judges : Surjit Singh, J

Bench : Single Bench

Judgement

Surjit Singh, J.—Heard and gone through the record. Petitioner is aggrieved by the action of the respondents in constructing a motorable road on portions of his land, comprised in Khasra Nos. 11, 37, 38, 40 and 41, which are owned and possessed by him, as per Jamabandi for the year 2004-05. His contention is that portions of the above described Khasra numbers, which are owned and possessed by him, have been utilized in the construction of road from Kao to Mendhi, without paying any compensation to him and also without obtaining his consent. According to petitioner, as a matter of fact, he had raised a loan of rupees one lac from H.P. State Agricultural Cooperative Land Development Bank for the development of land comprised in aforesaid Khasra numbers and the loan is still outstanding. He has sought issuance of a writ of mandamus, directing the respondents to start legal process for the acquisition of the land, under the provisions of Land Acquisition Act, 1894, and to pay compensation for the land, already utilized.

2. Respondents, in their reply, have not denied that the petitioner is the owner of the above said Khasra numbers. Their plea is that the road has been constructed under Pardhan Mantri Gramin Sarak Yojna (PGSMY) and that the petitioner did not raise any objection at the time, when road was being constructed and, so, the petition is not maintainable.

3. Learned Assistant Advocate General, representing the respondents, submits

that under PGSMY there is no provision for acquisition of land and payment of compensation to the land owners for the land utilized in the construction of road and, hence, the petitioner is not entitled to any compensation.

4. It is not the case of the respondents that petitioner had offered his land for being utilized for construction of road, under the aforesaid PGSMY Scheme. Their plea is that the petitioner did not object to the construction of the road on the site. Non-raising of objection by a landowner, when his land is being encroached upon, either by the State or its Agencies or even by a private person, does not disentitle him to seek his legal remedy. Neither the scheme of PGMSY authorizes the State or its Agencies to utilize private lands, without payment of compensation to the land owners nor could have a provision like that been made in the scheme as the same would have been contrary to the mandate of Article 300-A of the Constitution of India. In view of the above stated position, writ petition is allowed and the respondents are directed to initiate the process for acquisition of the land of petitioner, utilized in construction of road from Kao to Mendhi in Karsog Sub Division of Mandi District, within one month from today and to complete the process, within six months from the date of the initiation of the process and to pay compensation for the acquired land to the petitioner, within fifteen days of the finalization of the acquisition process.

Disposed of.