

(1997) 03 SHI CK 0031
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 1671 of 1996

Krishan Singh and Others

APPELLANT

Vs

State of H.P. and Another

RESPONDENT

Date of Decision : 26-03-1997

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 11A, 31, 31(3A), 31(4)

Citation : (1997) 2 ShimLC 348

Hon'ble Judges : M. Srinivasan, C.J.; Lokeshwar Singh Panta, J

Bench : Division Bench

Advocate : K.D. Sood, for the Appellant; Indar Singh, General for Respondents 1 and 2, for the Respondent

Final Decision : Dismissed

Judgement

M. Srinivasan, C.J.—The writ petition is taken up for hearing.

2. The Petitioners have challenged the validity of the award passed under the provisions of the Land Acquisition Act dated 26-4-1996, on the short ground that it is barred by limitation contained under the provisions of Section 11A of the Act. The notification under Sections 6 and 7 was issued on 29-2-1993 and there was corrigendum dated 27-4-1994 by which few more lands were added. The Petitioners challenged the proceedings of the acquisition in C.W.P. No. 733/94 in this Court, by order dated 6-9-1995. This Court disposed of the writ petition on the following terms:

Section 31 of the Land Acquisition Act has been amended by the State of Himachal Pradesh and a new Sub-section namely, Sub-section (3A) alongwith Sub-section (4) has been introduced.

In view of the above amendment made, we direct the Collector to consider the case of the Petitioners for alternative land of equivalent value nearabout the area at the time of passing the award. This shall be done before possession of the land of the Petitioners is taken over.

The writ petition is allowed to the extent indicated above.

3. The award has been passed subsequently on 26-4-1996. It is stated in the reply filed by Respondents that pursuant to the direction of this Court, revenue papers to allot alternative land to the Petitioners have been prepared and the matter has been referred to the District Collector, Shimla Division, Shimla on 22-4-1996 for sanction of the land in exchange of the acquired land of the Petitioners. It is also stated that the matter at present is pending before the revenue authority for sanction in favour of the Petitioners. It is categorically stated that till date no possession of the acquired land was taken over by the Respondents and the said land is still in peaceful possession of the Petitioners in view of the order of this Court dated 6-9-1996.

4. The contention of the Petitioner that u/s 11A, the period of two years from the date of notification has already expired and the award passed thereafter is invalid cannot be accepted. The explanation to Section 11A states that in computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

5. The explanation to Section 11A has been considered by the Supreme Court and interpreted in Government of Tamil Nadu and another Vs. Vasantha Bai, After referring to the judgment in Yusufbhai Noormohmed Nendoliya Vs. State of Gujarat and another, and Sangappa Gurulingappa Sajjan Vs. State of Karnataka and Others, the Court said in paragraph-8 as follows:

8. The ratio in the above cases would squarely apply to the facts in this case. The Division Bench of the High Court was clearly in error in taking the contrary view. We, therefore, hold that the stay of further dispossession would tantamount to stay of further proceedings being taken u/s 11 and Explanation to Section 11A covers, such an order and the entire period of stay has to be excluded in computing the period of two years prescribed by Section 11A.

6. In view of the categorical pronouncement of the Supreme Court there can be no doubt whatever if there is a stay of dispossession of the owners of the land acquired that would tantamount to stay of further proceedings being taken u/s 11 and Explanation to Section 11A of the Act. The period of such stay shall be excluded for consideration under the explanation to Section 11A We have already extracted the relevant part of the judgment of this Court in C.W.P. No. 733/94. This Court has directed the Respondents that they should not dispossess the Petitioners herein till the alternative land is provided to them pursuant to the award by way of compensation. Hence, there is a clear case of stay of dispossession within the meaning of Section 11 and Explanation to Section 11A as interpreted by the Supreme Court.

7. The next contention of the learned Counsel is that the original notification was amended in April, 1994 by including some more land and the award cannot be valid with regard to the same There is no substance in this contention as the writ

petition No. 733 of 1994 was filed long after the amendment of the original notification. In that writ petition they did not raise any such contention and the only direction given by this Court in the writ petition was to consider the case for granting alternative land instead of money compensation to the Petitioners. Hence, that contention is not available to the Petitioners in the present writ petition. Consequently, the writ petition fails and it is dismissed. There will be no order as to costs. C.M.P. is also dismissed. Interim order vacated.