
(1994) 10 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : Petition No. 256 of 1979

Raj Kumar Rajinder Singh

APPELLANT

Vs

State of Himachal Pradesh and Others

RESPONDENT

Date of Decision : 25-10-1994

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 —
Section 2(5), 27
Land Acquisition Act, 1894 — Section 4, 6

Citation : (1995) 1 ShimLC 442

Hon'ble Judges : G.C. Gupta, C.J.; Kamlesh Sharma, J

Bench : Division Bench

Advocate : Chhabil Dass, for the Appellant; B.K. Malhotra and A. K. Goel, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, C.J.—Petitioner claims to be the owner of land in Khasra No. 165 measuring 411.12 Bighas in village Jhakhari, Tehsil Rampur Busher, District Shimla and complains that the possession of the said land was taken over by the Respondents in the year 1971 on an assurance that the same would be acquired in accordance with the provisions of the Land Acquisition Act. It is his specific grievance that though notification u/s 4 of the aforesaid Act was issued on 13-12-1972, expressing the intention of the Respondent-State to acquire the aforesaid land for the public purpose, the said land was left out from the declaration u/s 6 of this Act issued, on 24-2-1973. The case of the Petitioner appears to be that since the Respondents have obtained possession of the said land on the assurance that the same will be acquired and compensation paid in accordance with the Act aforesaid, this Court should issue an appropriate writ or direction directing the Respondents to complete the formalities of acquisition in accordance with the said Act and pay compensation after determining the same in the award to be passed in accordance with the said Act. It is prayed, in the

alternative, that in case the acquisition proceedings cannot be completed for any reason whatsoever, the Respondents should be directed to restore possession of the said land to the Petitioner.

2. On being noticed the Respondents have filed their replies and claimed that the writ petition was not maintainable because of an earlier litigation between the parties in relation to the very land, involvement of disputed question of facts which cannot effectively be decided in this writ petition and the land in question had vested in the State-Respondent u/s 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act. It is, therefore, prayed that the petition be dismissed.

3. The dispute between the parties appears to have a chequered history. The Petitioners had filed Writ Petition No. 15/62 in the Court of the Judicial Commissioner, Himachal Pradesh, submitting that the disputed land could not vest in the Respondent-State u/s 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act. The Petitioner in the said petition had prayed that since the possession of the land was taken over by the Respondent-State, they be directed to determine the compensation and pay the same to him. The said writ petition was allowed by the Judicial Commissioner. The Respondent-State, however, challenged the decision of the Judicial Commissioner in the Supreme Court of India by filing an appeal in that behalf. (Civil Appeal Nos. 1186 to 1191 of 66). The Supreme Court, by its judgment dated 17-9-1969, held that lands covered u/s 27 of the aforesaid Act, would automatically vest in the State Government w.e.f 26th January, 1955. The Supreme Court, however, did not decide the actual controversy between the parties as several disputed questions of facts were involved. The case was, therefore, remanded to the Delhi High Court, (Himachal Pradesh Bench) for decision in accordance with law. It appears that in the meantime, the Judicial Commissioner's Court" was abolished and the jurisdiction thereof vested in the Delhi High Court. The writ petition was, thereafter, heard by the Delhi High Court and decided by its order dated 9th July, 1970. It was held that the writ petition involved several disputed questions of facts which could not be effectively adjudicated by the High Court while exercising its writ jurisdiction under Article 226 of the Constitution of India. The Petitioner was, therefore, directed to file Civil Suit for the purpose of those questions within a period of four months from the order.

4. Pursuance to the aforesaid, the Petitioner filed a Civil Suit which was the subject-matter of Civil Suit No. 15/70 in this High Court. This Court by its judgment dated 26th June, 1973, held that the disputed land had automatically vested in the State Government u/s 27 of the above mentioned Act on 26th January, 1955, and hence the Petitioner was not the owner of the said land. The suit was thus dismissed with costs. The petitioner, thereafter, preferred a Regular First Appeal against the aforesaid judgment and decree before a Division Bench of this Court which was registered as R.F.A. No. 9/73. It appears that the Petitioner gave a statement before the Division Bench of this Court to the effect

that the land in dispute-has been acquired by the Respondent-State and he has been paid compensation for the same and for the aforesaid reason, the appeal had become infructuous". He, therefore, sought permission to withdraw the suit and the appeal which permission was granted. The operative part of the order of the Court dated 23rd June, 1986, is as under:

... As the land in dispute has been acquired and the Appellant has been paid the compensation for the same, therefore, we are of the view that due to subsequent events there are sufficient grounds for allowing the Plaintiff to institute a fresh suit for the subject-matter and on the same cause of action. As a result we allow the Plaintiff to withdraw the suit with permission to tile a fresh suit in respect of the subject-matter of the suit on the same cause of action in case there is any necessity to file such subsequent suit. The suit is dismissed as with drawn and the present appeal is dismissed as having become infructuous....

It appears that instead of filing the suit for which permission had been granted by the Court, as aforesaid, the Petitioner filed the present writ petition claiming the reliefs, as aforesaid.

5. The Respondents have taken preliminary objections to the maintainability of the writ petition on the ground that the earlier writ petition having been dismissed by the Delhi High Court taking the view that disputed questions of facts are involved for which a Civil Suit is the appropriate remedy, the Petitioner is not entitled to file the present writ petition again agitating the same controversy. It is also submitted that in case the order of this Court dated 23rd June, 1986 in R.F. A.No. 9 of 1973 is to be ignored, the writ petition seeks to agitate stale and old matters and deserves dismissal for that reason alone. It is also submitted that the history of earlier litigation though well within the knowledge of the Petitioner, was not stated in the writ petition as originally filed and, therefore, the Petitioner is guilty of suppressing vital material. The writ petition according to the Respondents, deserves dismissal on this ground also.

6. As against this, learned Counsel for the Petitioner submits that the matter is neither stale nor the Petitioner is guilty of suppression of any vital material. According to the learned Counsel, the Petitioner had been permitted to amend the petition and hence the entire earlier history of litigation is on record. Learned Counsel further submits that in view of the earlier civil suit and the first appeal filed in this Court, the matter cannot be said to be stale. The Petitioner, therefore, prays that the preliminary objections have no merit and deserve to be rejected.

7. As had been noticed earlier, the prayer of the Petitioner in the instant writ petition is that acquisition proceedings in relation to his land bearing khasra No 165 should be directed to be completed in accordance with the provisions of the Land Acquisition Act. His specific grievance appears to be that though notification u/s 4 of the said Act dated 13-12-1972 included his land, declaration u/s 6 dated 24-2-1973 has excluded his land from its purview. He, therefore, prayed that the

Respondents be directed to issue fresh declaration u/s 6 of the Land Acquisition Act in relation to the land in dispute. It is" therefore, clear that it was on 24-2-1973 that the Petitioner's land was excluded from the acquisition proceedings and hence cause of action in his favour arose at that time while the present writ petition was filed on 27-9-1979. During this interval, the Petitioner had admittedly filed the Civil Suit seeking these very reliefs. It is unfortunate that his Civil Suit was dismissed. It is true that he had preferred an appeal against the said judgment and decree but sought permission to withdraw the said appeal, which was granted with the permission that he could file a fresh Civil Suit on the same cause of action. The benefit of this order would accrue to the Petitioner only if he had filed the Civil Suit for which permission had been granted by the Court. He had chosen not to do so. In that circumstance, the fact that the suit was pending in this Court would not be of any consequence mid would not be a circumstance condoning the delay of little over six years. Then it is also note-worthy that the notifications under Sections 4 and 6 had been issued during the pendency of the suit and could not be the subject-matter of the suit. As noticed earlier, the suit had been filed in the year 1970 and question of this acquisition was not in issue there. Under the circumstances, pendency of the Civil Suit would not be of any consequence. Then the statement made by the Petitioner at the time of seeking permission to withdraw the suit and appeal was that the land in question had been and "acquired and compensation paid. If the compensation had really been paid, the Petitioner would not have any cause of action in the instant case. The Petitioner's case, however, is that the land had neither been acquired and nor compensation had been paid. Since the statement before the Division Bench was also in relation to the land in dispute in this writ petition, it was patently a false statement and must be deemed to have been given to avoid the effect of judgment and decree passed by the learned single Judge in the Civil Suit. It is indeed unfair of the Petitioner to seek such an advantage by such unfair means. The writ jurisdiction being discretionary, it will not be be exercised in favour of the Petitioner as it would amount to putting premium on malpractice by a litigant This Court is, therefore, of the opinion that the filing of the suit and the appeal in this Court would not be a circumstance relevant for explaining the long lapse of time between acquisition, issuance of notifications under Sections 4 and 6 of the Land Acquisition Act and filing of the present writ petition.

8. In this connection, it is also note-worthy that the Petitioner had originally filed the writ petition in the Judicial Commissioner's Court (CWP 15/62), which was first allowed but the said decision was reversed by the Supreme Court which held that the land would automatically vest in the State Government on 26th January, 1955. The Supreme Court remanded the petition to the Delhi High Court (Himachal Bench) for decision on several grounds based on facts and law incorporated in the writ petition. The said writ petition was unfortunately dismissed on 9-7-1970 holding that it involved several disputed questions of facts, which could not be effectively decided by the High Court exercising writ

jurisdiction. The said judgment is still valid against the Petitioner. There is, therefore, no justification for this Court to entertain any fresh petition involving similar disputed question of facts and law. These facts are noticed in detail in the judgment of this Court dated 26-6-1973 in Civil Suit. No. 15/70 and cannot be ignored. For this reason also this Court would think that the writ petition filed by the Petitioner is not entertainable.

9. The bone of contention between the parties is that the possession of the land in khasra No 165 was handed over to the High Officials of the Electricity Department consequent upon negotiation between them and the Petitioner. This fact is denied by the Respondents. Some of the documents filed with the petition particularly the letter dated 2nd September, 1972 (Annexure B-5) indicate that the Petitioner had permitted the officers of Respondent Electricity Board to carry on investigation on the said land which permission was also withdrawn by writing this letter. Similarly, by another letter dated 14th July, 1972, (Annexure B-4), the Petitioner informed the Superintending Engineer of the Respondent-Electricity Board that no one will be permitted to enter into the land unless the same was requisitioned and compensation paid to him. In view of these statements, it is prima facie difficult to accept that the Petitioner had handed over the possession of the land to any one. The Respondents have emphatically denied the aforesaid fact and submitted that the question of handing over possession by the Petitioner did not arise as he was not the owner of the said land. The so called agreement regarding handing over the possession pending acquisition is also disputed. These questions cannot be effectively decided on the basis of entries in revenue records and without any proof thereof. Revenue records would, at the most, have presumptive value and the said presumption could be rebutted by adducing other evidence in that behalf.

10. Then the main question requiring consideration is whether the land in dispute really vested in the State Government u/s 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, mentioned above. It is true that the land is recorded as banjar quadim in the jamabandi and yet the land revenue is assessed for the aforesaid land, as would be clear from the copies of jamabandis filed by the Petitioner as Annexures G-2 and G-3. Banjar-quadim, according to Clover's reports is cultivable land temporarily not under cultivation and which is not assessed to any land revenue. A cultivable land not under cultivation could also be a grassy land or GHASNI which is particularly included in the definition of land u/s 2(5) of the aforesaid Act. Whether grass was actually grown on this land is, therefore, the material question requiring decision of the Court. If the grass was grown on the land, it would be covered by the definition of GHASNI and would consequently be covered u/s 27 of the said Act. This again will require evidence. In this connection it deserves notice that it was precisely for this reason that the Delhi High Court in its order dated 9-7-1970 required the Petitioner to file a Civil Suit. The Civil Suit was filed and the question whether the land in dispute had vested in the Government u/s 27 of the said Act was decided. The evidence adduced by the parties in the suit had led the Court to hold that

the land was GHASNI land and was included within the definition of land u/s 2(5) of the Act. It is true that after the appellate order permitting the Petitioner to file a fresh Civil Suit on the same cause of action, the said finding has no legal effect. In spite of it, it is being quoted only to show that the matter involves disputed questions of facts which cannot effectively be determined in the writ petition.

11. There is yet another reason why the writ petition deserves to be dismissed. The Petitioner's case as appearing from the statements contained in the writ petition is in relation to khasra No. 165 measuring 411.12 Bighas. This, however, seems to have been given up in the rejoinder dated 27-10-1991, wherein the dispute is stated to be relating to khasra Nos. 165/1, 165/2 and 165/4 without specifying the area of the aforesaid khasras. The supplementary affidavit of the Petitioner dated 4th May, 1992, contains yet another statement that "khasra No 165 min as separated from khasra Nos. 165/1 to 165/8 and 165 min is the subject-matter of the present petition" From the documents filed by the Petitioner along with the rejoinder, it is clear that old khasra No 165 has been divided into separate and independent khasras. It is, therefore not possible to specify the land in dispute with any amount of certainty. It was for the Petitioner to have clearly specified the same. This vagueness would make any decision of the dispute difficult, if not impossible.

12. In view of the discussions aforesaid, it is clear that the petition involves disputed questions of facts which cannot satisfactorily be decided in this writ petition. The writ petition not being the proper remedy for the purpose, it fails and is dismissed but without any orders as to costs.