
(2016) 12 SHI CK 0128
In the High Court Of Himachal Pradesh
Case No : CWP No. 4742 of 2011

Smt. Khuri

APPELLANT

Vs

State of Himachal Pradesh

RESPONDENT

Date of Decision : 06-12-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 23

Citation : (2017) AIRCC 683

Hon'ble Judges : Mr. Sandeep Sharma, J.

Bench : Single Bench

Advocate : Mr. B.S. Chauhan, Senior Advocate with Mr. Rakesh Thakur, Advocates, for the Petitioner; Mr. Ramesh Thakur, Deputy Advocate General, for the Respondents

Final Decision : Allowed

Judgement

Mr. Sandeep Sharma, J. (Oral)—By way of instant writ petition under Article 226 of the Constitution of India, the petitioner has prayed for following main relief(s):

"It is therefore prayed that the writ petition may kindly be allowed and appropriate writ, order or direction be issued to the respondents for initiating acquisition proceedings in respect to land measuring about 3 bighas used for the construction of road bearing Kh no 411 and 413 kita 2, measuring 00-13-61 hectares, situated at Mohal/Mauza Madhole, Tehsil Jubbal, Distt. Shimla, H.P. used in the year 1995 and made functional in 2007 in the interest of justice and fair play."

2. Briefly stated the facts as emerge from record are that land belonging to the petitioner, description whereof is available in para-4 of the petition, has been used by the respondents for the construction of road namely Mandhol-Khara Pathar-Patsai road in the year 1993 and it was completed in 2007. Petitioner has specifically averred in the petition that for the construction of aforesaid road,

land of the petitioner has been used by the respondents without there being any acquisition of land. Pleadings further suggest that the petitioner, at the time of construction of road, raised objection and prayed that before starting construction of road, steps may be initiated for acquiring the land in accordance with Land Acquisition Act (in short, "Act"). It also emerges from the record that on the assurance having been given by the respondent Department, petitioner allowed department concerned to construct the road through the land without there being acquisition of the land in terms of the Act. Pleadings further suggest that petitioner was assured by the representatives of the Department that acquisition proceedings would be started and amount of compensation would be paid in accordance with law. In the aforesaid background, petitioner allowed road to be constructed through the land as described in the petition but after the construction of the road, where now vehicles ply, no steps, whatsoever, were taken by the respondents for acquiring the land, admittedly, having been used by them for the construction of aforesaid road. It also emerges from the record that the petitioner made several requests to the authorities for initiating process for acquisition of land and payment of compensation thereafter, but despite that, no action was taken and as such petitioner was compelled to file present petition, for the redressal of her grievances praying therein for reliefs as reproduced herein above.

3. Respondents, pursuant to issuance of notice by this Court, filed a detailed reply refuting therein the claim of petitioner. Respondents, in their reply, submitted that the rural link road namely Mandhol-Khara Pathar-Patsai from KM 0/0 to 10/0 was proposed to be constructed under State Head during 1985 to facilitate the public of the area upon their popular demand to take their horticulture produce to the market by providing road connectivity. Work of the construction of road was started in 1985 from Magawta side and completed upto KM 4/810 upto village Madot in the year 1990-91. Land of the petitioner falls between RD 4/500 to 4/810 and cutting work through this portion of land as per MB (Measurement Book) entries (JD No. 1318 Page 4 to 7) has been completed during 1990-91. Respondents also placed on record copies of MB's suggestive of the fact that land in question was actually used by the respondent Department for the construction of road. It also emerges from annexure R-1 that at the relevant time, entries were made by the concerned officer in the MB. However, respondents categorically denied the contentions having been put forth on behalf of the petitioner that he had objected to the construction of road through his land, rather, respondents have stated that the road in question was constructed on the "persistent demand" of people of area. It would be apt to reproduce herein following para of the reply filed by the respondents:

"2. That in this behalf it is respectfully submitted that rural link road namely Mandhol-Khara Pathar-Patsai road from km 0/0 to 10/0 was proposed to be constructed under state head during the year 1985 to facilitate the public of the area upon their popular demand to take their Horticultural produce to the market by providing road connectively. The work of construction of road was started in

the year 1985 from Magawta side and completed up to K.M. 4/810 up to village Madot in the year 1990-91. The suit land of petitioner falls between RD 4/500 to 4/810 km and cutting work through this portion of suit land of petitioner as per MB entries (No. JD-1318 page 4 to 7) has been completed during 1990-91. The copy of MB entries is annexed as Annexure R-1. Needless to point out that none of the land owners including petitioner ever objected at the time of construction of road by the contractor through suit land. Thereafter, upon the persistent demand of the people of area, the remaining road i.e. from km 4/810 to 10/0 was started in the year 2002 and completed in the year, 2007. However, the work of construction of this road upto km 4/810 was completed during the year, 1990-91 and since then the villagers including petitioner has been utilizing the "usufruct" of this connectively upto 4/810 km by plying their vehicles. In fact, to provide connectivity to rural areas, the govt. of HP had formed a policy vide which land is to be donated by the land owners free of cost. Therefore, now the petitioner has raised dispute after an inordinate delay of about 30 years from the date of construction of road through her suit land i.e. in the year, 1990-91 when cutting work was done. Hence, the present writ petition is not maintainable as the petitioner has raised this highly disputed question of law and facts with respect to the land compensation on account of the use of suit land which otherwise cannot be adjudicated in a Civil Writ Petition having lost his remedy of filing a civil suit on the ground of limitation. As such at this belated stage the same being barred on the ground delay and laches as per the law laid down by the Apex Court in the case State of Maharastra v. Digamber (AIR 1995) SC 1991 : 1995 4 SCC 683 and recently followed up by the majority verdict of full bench of our Hon"ble High court on 2.3.2013 in CWP No. 1966 of 2010 titled as Shankar Dass v. State of H.P. & ors connected matters. Hence, the present petition deserves its dismissal on this ground alone."

4. Perusal of aforesaid para of reply clearly suggests that the land of the petitioner was used for construction of road and entries were recorded in the MB. Aforesaid averments contained in the reply support the contention put forth on behalf of the petitioner that at the time of construction of road, concerned officer while recording measurements in MB, repeatedly assured the petitioner that the land in question would be acquired in accordance with law and she would be paid compensation in terms of measurement recorded in the MB. While praying for rejection of the claim of the petitioner, respondents in their reply have categorically stated that the claim at such a belated stage can not be accepted and as such present petition may be dismissed on the grounds of delay and laches.

5. Mr. B.S. Chauhan, learned Senior Advocate duly assisted by Mr. Rakesh Thakur, Advocate, vehemently argued that perusal of reply of the respondents, clearly suggests that land of the petitioner was used by the respondents for the construction of the road in question that too without there being any payment of compensation. He, while placing reliance on annexure R-1, placed on record by the respondents, strenuously argued that it clearly suggests that at the time of

construction of road, measurements were recorded in the MB and repeated assurances were given to the petitioner that let the road be completed and then steps would be taken for acquisition of land and due and admissible compensation would be paid. While refuting the contentions raised by the respondents, with regard to delay in filing the petition, Mr. Chauhan, placed reliance upon judgment passed by the Apex Court in *Raj Kumar v. State of H.P.* and ors in SLP(C) No. 2373 of 2014 decided on 29.10.2015, wherein Hon''ble Apex Court has held that once user of land owned by the petitioner is not denied by the State in the counter affidavit filed before the High Court, plea of delay, may not be available to the respondents simply for denying legitimate claim of the person, who gave his land for the construction of road. Mr. Chauhan, further placed reliance on the judgment passed by this Court in a bunch of cases i.e. CWP No. 2067 of 2008 *Birbal v. State of H.P.* and others and connected matters, wherein, in the similar facts and circumstances, this Court directed the respondents to complete the proceedings under Land Acquisition Act for acquisition of the land of the petitioner, therein, within six months from the date of passing of the judgment and thereafter to pay due and admissible compensation.

6. Mr. Ramesh Thakur, learned Deputy Advocate General, vehemently opposed aforesaid prayer having been made on behalf of the petitioner. Mr. Thakur strenuously argued that no compensation as claimed in the present petition can be awarded to the petitioner at this belated stage because there is no document suggestive of the fact that after the construction of road, petitioner, at any point of time, made request to the authorities for the acquisition of land and payment of compensation. Mr. Thakur, while admitting that road in question was constructed through the land of the petitioner, stated that same was constructed on the popular demand of the people of area, who repeatedly requested the Government to construct road for their convenience and they themselves offered their land for the construction of road and as such, at this belated stage, petitioner can not be allowed to claim compensation qua same land. Mr. Thakur also placed reliance upon judgment passed by the Hon''ble Apex Court in case *State of Maharastra v. Digamber* (AIR 1995) SC 1991 and 1995 4 SCC 683, which was followed by a Full Bench of this Court on 2.3.2013 in CWP No. 1966 of 2010 *Shankar Dass v. State of H.P.* and another. In the aforesaid background, Mr. Thakur, prayed that the instant petition deserves to be dismissed on the ground of delay and laches.

7. I have heard learned counsel representing the parties and have carefully gone through the record made available.

8. True, it is that in the judgment passed by the Full Bench of this Court in *Shankar Dass v. State of H.P.* and others, it was held that in cases where State has not taken steps under Land Acquisition Act for the purpose of construction of road on the ground that required land had been willingly surrendered, either orally or otherwise or with the implied or express consent of the owners at the

relevant time, they can invoke jurisdiction refuting such express or implied consent or the stand of the State on voluntary surrender, only within the time within which such a relief can be claimed in a Civil Suit. Once such a question is thus raised in a Writ Petition, the same can be considered in the Writ Petition itself.

9. Careful perusal of pleadings as well as documents clearly suggests that land of the petitioner was used by the respondents for the construction of road in question in the year 1991 and it is also not disputed that no steps were taken by the respondents for the acquisition of land and thereafter for paying compensation in lieu of the land used by them for the construction of road. Interestingly, respondents in the present case neither in their reply nor in the oral submissions having been made at the time of hearing, disputed that the land of the petitioner was not used for the construction of road, rather, respondents took a very strange plea that since no objections were raised by the petitioner during construction of road, she can not be allowed to put forth claim for payment of compensation at this belated stage. Respondents, though have taken plea of delay and laches but no document worth the name has been placed on record to refute plea of petitioner that she had been repeatedly requesting the respondents to acquire land in question in accordance with law. As per the own case of the respondents, work of construction of road was started in 1985 from Magawta and completed upto KM 4/810 upto village Madot in the year 1990-91. Though respondents, in their reply, have taken stand that road in question was constructed upon the persistent demand of people of the area, but there is no document available on record suggestive of the fact that prayer for construction of road was ever made by the petitioner as well as other villagers, as is claimed by the respondents in their reply. Further, perusal of reply suggests that the construction of road in question though was started in the year 1985 but same was completed in 2007. Respondents have categorically stated in their reply that the work of construction of road upto KM 4/810 was completed in 1990-91 but since villagers including petitioner, had been utilizing "usufruct" of the connectivity upto 4/810 by plying their vehicles, which was completed in the year 2007. Reply also suggests that there is a policy of the Government to construct road on land which may be donated by the owners. But it may be again stated that neither there is any pleading nor document available on record suggestive of the fact that land in question was donated by the petitioner for the purpose of construction of road. Averments contained in the writ petition suggest that the land of the petitioner as well as co-owners was used for the construction of road, which was completed in 2007. There is no rebuttal to aforesaid assertion having been made by the petitioner in the writ petition.

10. In the instant case, this Court, after carefully perusing the reply having been filed by the respondents, is of the view that respondents have not been able to make out a case that petitioner willingly surrendered her land either orally or otherwise, with implied or express consent, at the time of construction of road, as such with due respect, this Court is of the view that the judgments passed by

the Full Bench of this Court in the case of Shankar Dass (Supra), may not be applicable in the present case. In the present case, respondents have not stated anything in their reply, from where it can be inferred that land in question was either donated by the petitioner for the construction of the road or there was any kind of implied consent on her part for using her land for the construction of road in question. The Hon''ble Coordinate Bench of this Court while dealing with the similar issue in CWP No. 128 of 2003 decided on 25.7.2007, titled "Mathu Ram v. State of HP and Ors.", wherein land was used for construction of road and compensation was paid to the similar situate persons, directed the respondents to initiate acquisition proceedings for acquisition of land of the persons and to pay compensation in accordance with law. As far as contention put forth by the respondents with regard to the inordinate delay in maintaining the petition as well as compensation is concerned, the Hon''ble Apex Court in case title Raj Kumar v. State of HP and Ors. in SLP(C) No 2373 of 2014 decided on 29.10.2015, held as under:-

"There is in our opinion considerable merit in the submission made by Mr. Nag. It is true that the appellant had approached the High Court rather belatedly inasmuch the land had been utilized sometime in the year 1985-86 while the writ petition was filed by the appellant in the year 2009. At the same time it is clear from the pleadings in the case at hand that the user of the land owned by the appellant is not denied by the State in the counter affidavit filed before the High Court of that filed before us. It is also evident from the averments made in the counter affidavit that the state has not sought any donation in its favour either by the appellant or his predecessor in interest during whose life time the road in question was constructed. All that is stated in the counter affidavit is that the erstwhile owner of the land "might have donated" the land to the State Government. In the absence of any specific assertion regarding any such donation or documentary evidence to support the same, we are not inclined to accept the ipsit dixit suggesting any such donation. If that be so as it indeed it, we fail to appreciate why the State should have given up the land acquisition proceedings initiated by it in relation to the land of the appellant herein. The fact that the State Government had initiated such proceedings is not in dispute nor is it disputed that the same were allowed to lapse just because the road had in the meantime been taken under the Pradhan Mantri Gram Sadak Yojna. It is also not in dispute that for the very same road the land owned by Kanwar Singh another owner had not only been notified for acquisition but duly paid for in terms of Award No. 10 of 2008. In the totality of the above circumstances, the offer made by Mr. Nag to the effect that the appellant would be satisfied if he is paid compensation at the rate determined and paid to Kanwar Singh under Award No. 10 of 2008 appears to be reasonable. That is so especially when the compensation in terms of Award No. 10 of 2008 was determined by reference to a Notification issued nearly 10 years ago The fact that the appellant is giving up his claim for any compensation for wrongful utilization of land and to the payment of interest which is otherwise statutorily prescribed makes the offer still

more attractive for the State."

11. Further, Mr. Chauhan, has relied upon judgment rendered by Apex Court in K.B. Ramachandra Raje v. State of Karnataka reported in (2016) 3 SCC 422, wherein it has been held as under:

"15. According to the learned counsels for the respondents the writ petition is inordinately delayed. The writ petition has been filed in the year 1994 though the acquisition of land was finalized in the year 1988 and, in fact, the possession of the land to the respondent No.28-Society was handed over as far back as on 26th September, 1988. It is further pointed out that the fact that the acquisition was being made, in part, for the respondent No.28-Society is amply clear from the recitals contained in the order dated 31st July, 1987, by which the objections of the appellant under Section 16(2) was rejected. In this regard, it is also pointed out that in the course of the objection hearing the appellant was represented by his counsel. It is therefore contended that the statement made by the writ petitioner - appellant that he came to know about the allotment of the land for the respondent No.28-Society when the said Society had made attempts to construct a wall on the land in the year 1994 is wholly incorrect and the entire premise on the basis of which the writ petition has been filed is false. Therefore, on the aforesaid twin grounds of delay and lack of bona fides of the writ petitioner, the present appeals are liable to be dismissed.

28. It has been vehemently argued on behalf of the respondents that the writ petition ought not to have been entertained and any order thereon could not have been passed as it is inordinately delayed and the appellant has made certain false statements in the pleadings before the High Court details of which have been mentioned herein above. This issue need not detain the Court. Time and again it has been said that while exercising the jurisdiction under Article 226 of the Constitution of India the High Court is not bound by any strict rule of limitation. If substantial issues of public importance touching upon the fairness of governmental action do arise the delayed approach to reach the Court will not stand in the way of the exercise of jurisdiction by the Court. Insofar as the knowledge of the appellant - writ petitioner with regard to the allotment of the land to the respondent No.28-Society is concerned, what was claimed in the writ petition is that it is only in the year 1994 when the respondent No.28-Society had attempted to raise construction on the land that the fact of allotment of such land came to be known to the writ petitioner-appellant.

29. A mere recital of the fact that a part of the land proposed for acquisition is contemplated to be allotted to the Respondent No. 28 in the order dated 31st July, 1987 rejecting the objections filed by the writ petitioner - appellant in response to the notice issued under Section 16(2) of the 1903 Act, in our considered view, cannot conclusively prove that what was asserted in the writ petition has to be necessarily understood to be false and incorrect. At the highest, the fact claimed by the respondents that the appellant had previous knowledge may be a probable fact. The converse is also equally probable. Taking

into account the above position and the contentious issues raised and the conduct of the State Authorities and the MUDA, we are of the view that the said fact by itself i.e. delay should not come in the way of an adjudication of the writ petition on merits. We, therefore, hold that the impugned acquisition by MUDA under the provisions of the 1903 Act is invalid in law and has to be so adjudged.

12. Accordingly, in view of the aforesaid observations/findings of the Hon''ble Apex Court, the plea of inordinate delay having been raised by the respondents deserves to be rejected out rightly. In the aforesaid judgment, Hon''ble Apex Court has observed that time and again it has been said that while exercising jurisdiction under Article 226 of the Constitution of India, the High Courts are not bound by strict rule of limitation. In the instant case, this Court would be failing in discharging its duties, in case appropriate directions are not issued to the respondents to pay due and admissible compensation to the petitioner, whose land has been used by the State for the construction of the road in question.

13. Consequently, in view of detailed discussion as well as law referred to herein above, this petition is allowed. Respondents are directed to pay due and admissible compensation to the petitioner in lieu of land admittedly used by them for the construction of road in question by resorting to the procedure as is envisaged in Land Acquisition Act. Since considerable delay has already occurred in initiation of proceedings under Land Acquisition Act, respondents are directed to complete the acquisition proceedings under Land Acquisition Act for the acquisition of land within six months from today and pay the compensation to the petitioner thereafter.

14. Pending applications, if any, are disposed of.