
(2008) 08 SHI CK 0013
In the High Court Of Himachal Pradesh

Smt. Lata and Another

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 25-08-2008

Acts Referred:

Land Acquisition Act, 1894 — Section 4

Citation : (2009) 1 ShimLC 107

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajiv Sharma, J.—The brief facts necessary for the adjudication of this writ petition are that the husband of the petitioner No. 1 and father of petitioner No. 2 was owner of land bearing Khewat No. 161, Khatauni No. 222, Khasra Nos. 95 and 97, measuring 14-4-0 bighas situate in Mauza Raan/196, Pargana Saho, Tehsil and District Chamba. The petitioners have inherited this land after the death of Naresh Sehgal.

2. The respondent-State had started the construction work of Sarahan-Raan road in the year 1989 which passed through the land of the petitioners in the year 1997. The Sarahan-Raan road was constructed under the State Budget (BASP). The petitioners have neither been paid any compensation nor their land has been acquired under the Land Acquisition Act, 1894.

3. Mr. Jagan Nath, Advocate, has strenuously argued that his clients could not be deprived of their land save in accordance with law. He then contended that the land of the petitioners has been utilized for the construction of road, however, the same has not been acquired under the Land Acquisition Act, 1894. He finally contended that the respondents are bound to acquire the land of the petitioners and they cannot be permitted to use the land of the petitioners unauthorisedly.

4. Learned Deputy Advocate General has strenuously argued that the land has been utilized for the construction of road with the consent of deceased Naresh

Kumar. He further contended that the land has been voluntarily handed over to the State by Shri Naresh Kumar.

5. I have heard the learned Counsel for the parties and have perused the record carefully.

6. The construction of the road was undertaken by the State in the year 1989. It is admitted by the respondents that the road, in part of Khasra Nos. 95 and 97 owned by the petitioners, was constructed in the year 1989. The petitioners have placed on record copy of the demarcation report, Annexure P-4, carried out by the Kanungo on 29.5.2006. It is evident from the contents of the demarcation report that out of Khasra No. 95/1 land measuring 0-18-12 bighas and out of Khasra No. 97/1 land measuring 0-13-10 bighas, total measuring 1-12-2 bighas, the road is found to have been constructed which was also verified from the spot and from the Field Book. It has also come in the Field Book that fruit bearing trees owned by the petitioners were also damaged while construction of the road was undertaken.

7. The stand of the State is that the land was utilized by it for the construction of Sarahan-Raan road with the consent of Shri Naresh Kumar. The respondent-State has not placed on record any document to substantiate that Shri Naresh Kumar had ever consented for utilization of his land for the construction of road. There is a detailed procedure how the land has to be acquired for construction of roads under the Land Acquisition Act, 1894. The petitioners cannot be deprived of their right to property enshrined under Article 300-A of the Constitution of India. It is settled law by now that no citizen can be deprived of the property save in accordance with law. It is admitted by the respondents that the road was started in the year 1989 and passed through Khasra Nos. 95 and 97 owned by the petitioners. It is clear from the demarcation report that area measuring 1-12-2 bighas has been utilized by the State for the construction of road. The damage has also been caused to the fruit bearing trees owned by the petitioners.

8. A Division Bench of this High Court in *Nokhia and Ors. v. State of H.P. and Ors.* ILR 1984 H.P. 906, has held as under:

Now, the version set out in the affidavit that possession of the land of the petitioners and other land owners, which was and is being utilised for the construction of the Bhatta Kuffar-Koti road, was taken "with due verbal consent of the land-owners" does not appear to us to be true or, at any rate, wholly true. The material particulars, such as, when precisely the consent was obtained, whether the consent was given by all interested persons and, if so, whether it was free consent given after full knowledge of their rights and of the implications involved in surrendering the possession even before the acquisition proceedings were under active contemplation and initiated, who was the authority that obtained the consent and in what manner, etc., are not set out in the affidavit. A vague assertion that the land-owners orally consent to the taking of possession on a verbal assurance held out to them that due compensation will be paid on

completion of the acquisition proceedings cannot be accepted in view of the version set out in the petition and the subsequent conduct of the concerned authority in failing to initiate the acquisition proceedings by the issue of a notification u/s 4 for five years and that u/s 6 for seven years. Besides, there is internal indication in the affidavit itself which belies the version relating to the alleged oral consent. The deponent has stated that it is on account of such "verbal consent" that the land-owners did not object to the construction of the road through their lands in the "initial stage". Implicit in this assertion is a concession that the landowners remained passive spectators only in the initial stages of the construction of the road, presumably because they were unaware of their rights, which is the case of the petitioners, and that at subsequent stages the land-owners had raised some protest or attempted to assert their legal rights. These facts emerging from the affidavit themselves are destructive of the theory of oral consent. Besides, if consent is the defence for by-passing the substantive and procedural requirements of law relating to the acquisition of property, what the authority has to show is that the consent was not only free but informed. Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. Consent can be regarded as informed when it is an act of reason, accompanied with deliberation of a mind which knows the right and wrong, good and evil, and it postulates an active will on the part of the person giving consent to permit the doing of the act complained of with full knowledge of the nature of the act that is being done and the rights and obligations of the parties involved in the commission of the act. Even if the verbal consent, as alleged, was given by the land-owners in the instant case, no material has been brought on record to show that it was free and informed consent in the sense explained above. In the absence of any such material and in light of the circumstances to be presently noticed, it would not be unreasonable to proceed on the basis that such consent, even if obtained, was not free and informed. The consent was given on the strength of a representation with regard to the payment of compensation which has not been acted upon for an unreasonable long period and from the lackadaisical manner in which the authority has since acted shows that such representation, when made, was not intended to be really acted upon. The consent, if any, was, therefore, obtained upon a misrepresentation. The class of society to which the petitioners, who are amongst the landowners, belong, is a factor which by itself is sufficient to sustain a legitimate inference that the consent could not have been informed. Indeed, the averments made in the petition - "we learn that no road can be constructed until and unless compensation is given to the land-owners" - lends support to the view that the consent, if any, was not the deliberate act of persons who knew the true nature and character of the act and who were capable of taking a balanced decision with full awareness of their legal rights as well as statutory obligations of the authorities. We are, therefore, clearly of the view that the theory of oral consent is a clear afterthought and that, in any case, even if such consent was given or obtained, it cannot be set up as a valid defence, since it cannot be regarded as free and informed consent in the eye of law.

9. Their Lordships of the Hon^{ble} Supreme Court in *State of U.P. and Others Vs. Manohar*, , have held that the State cannot take the plea of delay and laches while detailing the land of the citizens unauthorisedly. Their Lordships have held as under:

The grievance of the respondent before the High Court was that his name was high-handedly deleted from the revenue record and the revenue record thereafter showed the name of the appellants. He was dispossessed from the land and no compensation was paid, nor were any steps taken in law for acquiring the land. The respondent demanded an amount of Rs. 10 lakhs as compensation with interest from the date of dispossession. The appellants appeared through Counsel before the High Court and produced certain records. In view of the correspondence, to which we have referred, between the Officers of the State, the High Court came to the conclusion that the case made out by the respondent was acceptable and that the State should be directed to take steps to pay compensation to the petitioner within 3 months with appropriate interest in accordance with the law. The High Court contemptuously dismissed the arguments of the Counsel for the appellant that the petitioner had already been paid the compensation but that the records evidencing such payment were not available as they had been "weeded out" due to the delay on the part of the respondent in approaching the Court. As having heard the learned Counsel for the appellants, we are satisfied that the case projected before this Court by the appellants is utterly untenable and not worthy of emanating from any State which professes the least regard to being a welfare State. When we pointed out to the learned Counsel that, at this stage at least, the State should be gracious enough to accept its mistake and promptly pay the compensation to the respondent, the State has taken an intractable attitude and persisted in opposing what appears to be a just and reasonable claim of the respondent. Ours is a constitutional democracy and the rights available to the citizens are declared by the Constitution. Although Article 19(1)(f) was deleted by the Forty-fourth Amendment to the Constitution, Article 300-A has been placed in the Constitution, which reads as follows:

300-A. Persons not to be deprived of property save by authority of law,--No person shall be deprived of his property save by authority of law.

This is a case where we find utter lack of legal authority for deprivation of the respondent's property by the appellants who are State authorities. In our view, this case was an eminently fit one for exercising the writ jurisdiction of the High Court under Article 226 of the Constitution. In our view, the High Court was somewhat liberal in not imposing exemplary costs on the appellants. We would have perhaps followed suit, but for the intransigence displayed before us. In the result, we dismiss the appeal with exemplary costs of Rs. 25,000/-. The compensation payable as directed by the High Court, together with the costs directed by us, shall be paid within a period of 3 months from today. The respondent shall also be paid interest on the compensation amount from

22.2.1999 till date of payment @ 9% per annum.

10. Their Lordships of the Hon^{ble} Supreme Court in *Chairman, Indore Vikas Pradhikaran Vs. Pure Industrial Cock and Chem. Ltd. and Others*, , have held that right to property is integral part of human rights. Their Lordships have held as under:

The right to property is now considered to be not only a constitutional right but also a human right.

The Declaration of Human Rights (1789) enunciates under Article 17:

Since the right to property is inviolable and sacred, no-one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid.

Further under Article 21 of 10th December, 1948, adopted in the General Assembly Resolution it is stated that : (i) Everyone has the right to own property alone as well as in association with others, (ii) No-one shall be arbitrarily deprived of his property.

Earlier human rights were existed to the claim of individuals right to health, right to livelihood, right to shelter and employment etc. but now human rights have started gaining a multifacet approach. Now property rights are also incorporated within the definition of human rights. Even claim of adverse possession has to be read in consonance with human rights.

As President John Adams (1797-1801) put it:

"Property is surely a right of mankind as real as liberty." Adding,

The moment the idea is admitted into society that property is not as sacred as the laws of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence.

Property, while ceasing to be a fundamental right would, however, be given express recognition as a legal right, provisions being made that no person shall be deprived of his property save in accordance with law.

11. The upshot of the above discussion is that the land of the petitioners has been used unauthorisedly by the State without paying compensation or acquiring the land under the Land Acquisition Act, 1894 for the construction of road. The State is bound to acquire the land of the petitioners in accordance with law for utilizing the land for construction of Sarahan-Raan road comprised in Knasra Nos. 95 and 97.

12. The respondent-State has only made a bald assertion that the land owners had orally consented to the taking of possession of land on a verbal assurance. The respondents have not given details when the consent was obtained and who was the authority that obtained the consent and in what manner. The plea set up by the State that the owners have given consent and voluntarily handed over the

land cannot be accepted.

13. Accordingly, the writ petition is allowed.

14. The respondents are directed to acquire the land of the petitioners comprised in Khasra Nos. 95 and 97 situated in Mauza Raan/196, Pargana Saho, Tehsil and District Chamba under the Land Acquisition Act, 1894. The entire proceedings will be initiated and completed by the respondent-State for acquisition of land, of the petitioners within a period of six months from today. No costs.