

(2020) 11 SHI CK 0118
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 560 Of 2020

Sunil Kumar

APPELLANT

Vs

Union Of India & Others

RESPONDENT

Date of Decision : 11-11-2020

Acts Referred:

Citation : (2020) 11 SHI CK 0118

Hon'ble Judges : L. Narayana Swamy, CJ;Anoop Chitkara, J

Bench : Division Bench

Advocate : Sudhir Thakur, Karun Negi, Rajesh K. Sharma, K.D. Shreedhar, Shreya Chauhan, Ashok Sharma, Ranjan Sharma, Ritta Goswami, Adarsh K. Sharma, Vikrant Thakur

Final Decision : Dismissed

Judgement

Anoop Chitkara, J

1. Seeking a writ of mandamus, directing the respondents not to demolish the structure, disconnect electricity and water supplies of the said structure, half portion of which was acquired for construction of Chandigarh-Shimla four lane highway, the petitioner claiming to be its owner in possession, has come up before this Court by way of the instant petition.

2. Petitioner has made the following prayers:

"(i) Issuing writ of mandamus directing the respondents to not to demolish the building existing over Khewat/Khatauni No. 337/509, hadbast No. 48, Khasra No. 974 measuring 214 Sq. meters in Mohal Basal Patti Kather, Tehsil Solan, Himachal Pradesh.

(ii) Issuing writ of mandamus to the respondents no. 4 and 5 not to disconnect water and electricity supply and connection to the building in question situated Khewat/Khatauni No. 337/509, hadbast No. 48, Khasra No. 974 measuring 214 Sq. meters in Mohal Basal Patti Kather, Tehsil Solan, Himachal Pradesh.

(iii) Issuing direction to the respondent not to dispossess the petitioner in any manner without acquiring the land in question of the petitioner."

3. The writ petitioner contends that vide Mutation No. 4182, dated 26. 08.2017, the 3rd respondent i.e., The Competent Authority under Land Acquisition Act (CALA)-cum- SDO Civil Solan, HP, acquired 18 square meters of land in terms of Award No. 31, dated 31.03.2016 (Annexure P-2). His further contention is that from the same khasra number vide another Award No. 31/B, dated 5.10.2018 (Annexure P-3), the respondents also acquired 30 square meters of more land. He further contends that the 3rd respondent vide Award No. 31/1, dated 15.12.2016, had also acquired half portion of the structure standing on the aforesaid land and had paid compensation vide Annexure P-4. He contends that in this area the construction work of the four lane is complete, and half structure already stands demolished, and even the boundary wall also stands built at the spot. However, the remaining portion, which is in possession of the petitioner was never acquired and the petitioner continues to be its owner in possession.

4. The cause of action accrued to the petitioner initially on 17th August, 2019 when the 3rd respondent issued notice (Annexure P-7) for disconnection of the water and electricity supply, and also on 4.01.2020 when the 4th respondent issued notice (Annexure P-6) for disconnection of electricity supply. Now appertaining that such disconnection(s) would lead to the demolition of the structure of which he is in possession, being its owner, the petitioner has come up before this Court for issuance of a writ of mandamus against such arbitrary executive actions.

5. The 2nd respondent/NHAI has filed a detailed reply. The other respondents did not file their separate replies.

6. In reply filed by the 2nd respondent, after giving details of the National Highway Authority of India and its acquisition process, in paragraph -9 of the preliminary submissions, it specifically mentions that the respondents had also acquired the structure, for which petitioner was paid compensation to the tune of Rs. 64,21,062/- vide Award No. 31/1 dated 15. 12.2016 (Annexure P-4), and vide another Award dated 31/B, dated 5.10.2018 (Annexure P-3) an additional sum of Rs. 6,33,284/- was also awarded to the petitioner, and the petitioner has already received the entire amount. The NHAI further submitted that the said structure was evaluated by the Evaluator and the compensation was for the whole structure and not part thereof. The respondent/NHAI further submitted that for the redressal of the grievances of the petitioner, NHAI had formed a Committee vide Annexure R- 2/1, dated 1st February, 2019, and vide Annexure R-2/2, dated 29th June, 2019, the Committee clarified the position. In nut-shell the stand of the NHAI is that they had paid compensation for the entire structure and not for part thereof.

7. During the course of hearing the Court had asked the NHAI to produce the file pertaining to the present acquisition proceedings. Accordingly, Mr. K. D.

Shreedhar, learned Senior Counsel, representing the NHAI, had showed us the record pertaining to Award No. 31/1, dated 15. 12.2016.

8. A perusal of the Assessment file number 10 (pencil page No. 278), reveals that the area of the petitioner's structure, which got acquired, had 135. 39 sq. meters on its ground floor. It also mentions the area on the other floors, which was different because of the construction design. The said valuation report discloses that the provisional valuation assessed for the structure was assessed as Rs. 32,10,531/-. Further, on page 282, which is the details of the compensation of structures, depicts the petitioner's structure against Sr. No. 1., the name of the petitioner finds mention in Column No. 2 as Sunil Kumar; in the 3rd column, khasra number is mentioned as 974/1; in the fourth column, the compensation amount is given as Rs. 32,10,531/-; and in the last column, total compensation is assessed at Rs. 88,13,425/-. On page 279 of the record, the description of the land is shown as Khasra No. 974.

9. In Para 3 of the petition, the petitioner refers to the land records and refers to the copy of Jamabandi, Annexure P-1, which contains the mutation to the effect that the respondents had acquired 18 square meters of land. Similarly, in paragraph-4, the revenue records state acquisition of 30 square meters of more land. The petitioner's case is that from khasra No. 974, which consists of 262 sq. mts. of land, another khasra number was carved out, and it was numbered as khasra number as 974/1, measuring 18 square meters and the respondents had acquired only this much of land.

10. The answer to this contention lies in the admitted fact that the petitioner had received compensation. Such a considerable payment cannot be for land measuring 18 square meters and the structure built on just 18 square meters. Even the petitioner states that the respondents had acquired half of the structure, but it is not his case that the structure built on 18 square meters constituted half. The amount of compensation assessed at around INR Eighty-eight lacs by the respondents belies such claim and cost of land, and the structure built upon it could not have been evaluated as around Rs. 88 Lacs. On the contrary, the valuation report referred to supra pertained to the structure with the ground floor area of 135.39 square meters.

11. In the overall analysis of the pleadings and reference to Award No. 31/1, it is beyond any shadow of a doubt that the respondents had paid money for the entire structure. However, they had not acquired land as a whole. Thus, even if some portion of the land is in the petitioner's name, the structure over it was acquired and suitably compensated. Therefore, the petitioner had no right to continue possession over such a structure, which stood acquired and for which he had received compensation.

12. Mr. K.D.Shreedhar Ld. Sr. Advocate submits that the land acquired by the NHAI consists of three components. First, the acquired width on which the construction activity occurs; Second, the controlled width on which road is not

constructed but kept open without superstructure; and the third falls under the Himachal Pradesh Roadside Land Control Act, 1968. The Central Government had acquired land for the proposed Right of Way (ROW). The structures on the controlled width are also demolished for safety purposes to prevent accidents and unobstructed vision. The remaining portion falls in the purview of the H.P. Roadside Land Control Act, with which we are presently not concerned. The acquired land and land in the controlled width falls within the National Highway Act's purview.

13. Mr. K.D. Shreedhar, learned Senior Advocate, further contends that while demolishing some structures, due to design, it makes the remaining undemolished structure unstable, prone to buckle. Thus, to protect life, such unsafe structures are fully acquired and demolished. He contends that in the present case also the structure was acquired, compensation paid. After that, the petitioner is neither the owner of such a structure for which he has already received payment, nor has he any right to continue in possession. Ld. Sr. Counsel states that NHAI reserves the right to claim the loss caused to it and the usage charges from the date he was supposed to vacate the said structure. He further submits that despite receiving the entire compensation amount, the petitioner continues in unauthorized occupation of the property that now belongs to the NHAI. He also contends that the petitioner did not bring fundamental facts to the notice of the Court and obtained an interim stay in his favor because of which the respondents are not in a position to evict him and disconnect his electricity and water connections.

14. A perusal of the entire facts disclose that the petitioner took advantage of the situation because the NHAI slept over the matter. Were they prompt in demolishing the structure for which they had duly paid the compensation, then the petitioner would not have got any opportunity to continue in possession, frustrating the very purpose of the acquisition. If the NHAI was prompt in accomplishing its project and the project was not lackadaisical, then the petitioner would not have got any chance to continue in possession. Thus, the NHAI is squarely to be blamed for not taking acquisition to its logical end, of which the petitioner took full advantage. In response to the question of this Court that why did NHAI delay such demolitions, Mr. K.D. Shreedhar assures us that NHAI will speed up the demolition process of all similar structures in the entire State of Himachal Pradesh.

15. In the present case, despite the Award passed in the year 2016 and payment of compensation made way back in the year 2018, the NHAI did not demolish the entire structure for which they had already paid the compensation amount. For this reason, the petitioner took advantage of the situation and continued to stay in possession thereof. Although the petitioner's conduct is inappropriate, even there are lapses on the part of the NHAI for delaying the demolishing of the structure, which led to the filing of the present petition.

16. Given above, there is no case for issuance of any writ for any of the prayers

mentioned in the petition. The writ petition is dismissed. Interim order dated 31.01.2020 is vacated with immediate effect.

Pending application(s), if any, are closed.