

(1994) 11 SHI CK 0023
In the High Court Of Himachal Pradesh
Case No : Writ Petition No. 173 of 86

Vidya Parkash and Others

APPELLANT

Vs

State of H.P. and Others

RESPONDENT

Date of Decision : 17-11-1994

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : (1994) ShimLC 190 Supp

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

Bench : Division Bench

Advocate : Vijay Thakur, for the Appellant; M.L. Chauhan, Assistant Advocate for General Respondent Nos. 1 and 2 and Praneet Gupta, for Bhupender Gupta, for Respondent Nos. 4, 5, 7, 8, 10, 12 and 13, for the Respondent

Final Decision : Dismissed

Judgement

Gulab C. Gupta, C.J.—Petitioners claim to be the residents of Old Bilaspur Town which remains submerged in the waters of Gobind Sagar Dam. Their lands, houses and other properties situate in the said town were acquired. As a result whereof, they got the status of oustees. The respondent, State Government, with a view to re-habilitate such oustees, decided to construct the new Township of Bilaspur and allotted plots to the oustees. Petitioners also received plots in the said process by executing lease deeds, Annexures PD to PH. There was open space at the northern side of their plots, which though not allotted to them, was, according to them, kept open for community convenience. The case of the Petitioners is that they were at that time given to understand that the said open space would remain open in perpetuity. They were, however, surprised to find out that the aforesaid open space which formed part of khasra No. 248, was being divided into plots, to be allotted to the Respondents. This, according to the Petitioners, amounts to breach of lease conditions and also their legitimate expectations. Since Respondents No. 1 to 3 have conducted the aforesaid plotting and allotment of the said vacant site, inspite of their objections, they have

preferred this writ petition challenging the legal validity thereof.

2. The reply of the Respondents No 1 and 2 is that in between the area in question, i.e. khasra No 248 and the plots of the Petitioners, there is a 15 feet wide road and hence neither any part of the leased plot of the Petitioners nor its frontage is being plotted and allotted to the said Respondents. It is further submitted that the allottees of these plots are also oustees who have lost their property as a consequence of construction of Bharihra Dam and formation of Govind Sagar Lake. The plotting has been approved by the Respondent, Director Town and Country Planning and does not adversely affect the petitioners' right in any manner. The Respondents, therefore, pray that the Petitioners have no legitimate grievance to make in the matter and, therefore, pray that the writ petition be dismissed.

3. That the Petitioners are oustees and were allotted plots is not in dispute. The entire area allotted to them under the lease deeds (Annexures PD to HP), is admittedly in their possession and is not affected in any manner. In spite of it, schedule to these lease deeds indicate that the northern side of it is open. The question requiring consideration is whether the disputed land changes the description of the Petitioner's plots in any manner? A perusal of paras 10 and 11 of the petition would indicate that the vacant site bears khasra No. 248. From the map filed by the Petitioners, Annexure PC, it is not clear as to where the land is situate. However, map filed by the Respondents (Annexure RB) indicates that in between Petitioners' plots and khasra No. 248 there is a road known as "Gurdwara Road" which leads to the main Market. This area, according to this map, is situate on the southern side of the Petitioners' plot. A perusal of lease-deeds would indicate that the southern side of Petitioners' plots are bounded by the Road. Under the circumstances, it is clear that what has been left open in the lease deeds towards north is not the area affected by present plotting and allotment to the Respondents and the Petitioners cannot have any grievance in the matter.

4. The aforesaid would clarify that the land in khasra No. 248 and plots carved out therefrom, cannot be either part of the lease-deeds executed in favour of the Petitioners or even otherwise on its periphery. Petitioners could not reasonably claim that nothing would be constructed even on the other side of the road. The averments that they were given to understand that nothing will be constructed on the open plot is so vague in necessary particulars that it cannot be seriously taken. Under the circumstances, there would be no scope of application of doctrine of legitimate expectation in the instant case. The word "legitimate" in this phrase is of considerable importance and excludes all such expectations which are not legitimate. In this connection the recent decision of the Supreme Court in *Madras City Wine Merchants' Association and Another Vs. State of T.N. and Another*, may be referred to wherein this doctrine has been described in detail and its essential features clarified. According to the Court, legitimate expectation may arise ; (a) if there is an express promise given by a public

authority ; or (b) because of the existence of a regular practice which the claimant can reasonably expect to continue ; and (c) such an expectation must be reasonable The Court also clarified that if there is a change in policy or in public interest, the position is altered by a rule or legislation, no question of legitimate expectation would arise. (Para-48).

5. The Court while laying down the aforesaid, referred to its earlier decisions in State of Himachal Pradesh and another Vs. Kailash Chand Mahajan and others, ; Food Corporation of India Vs. M/s. Kamdhenu Cattle Feed Industries, and Union of India and others Vs. Hindustan Development Corpn. and others, , and clarified the contents thereof. Referring to Kailash Chand Mahajan's case, their lordships clarified that "even legitimate expectation cannot perclude legislation". Referring to Food Corporation of India's case, their lordships clarified that ; every legitimate expectation is a relevant factor requiring due consideration in a fair decision-making process. Whether the expectation of the claimant is reasonable or legitimate in the context is a question of fact in each case. Whenever the question arises, it is to be determined not according to the claimant's perception but in the larger public interest wherein other more important considerations may outweigh what would otherwise have been the legitimate expectation of the claimant. A bona fide decision of the public authority which satisfy the requirement of non-arbitrariness and withstand judicial scrutiny, would not be affected by this doctrine. Referring to Hindustan Development Corporation's case their lordships clarified that a case of legitimate expectation would arise when a body by representation or by past practice aroused expectation which it would be within its powers to fulfill The protection is limited to that extent and a judicial review can be within those limits. But claimant of legitimate expectation must satisfy that there is a foundation for such a claim. In considering the same several factors which gave rise to such legitimate expectation must be present. The decision taken by the authority must be found to be arbitrary, unreasonable and not taken in public interest. If it is a question of policy, even by way of change of old policy, the courts cannot interfere with a decision. In a given case whether there are such facts and circumstances giving rise to a legitimate expectation, it would primarily be a question of fact. If these tests are satisfied and if the court is satisfied that a case legitimate expectation is made out, then only the Court would be entitled to grant relief and not otherwise. If a denial of legitimate expectation in a given case amounts to denial of right guaranteed or is arbitrary, discriminatory, unfair or biased, gross abuse of power or violation of principles of natural justice, the same can be questioned on the well known grounds attracting Article 14 but a claim based on mere legitimate expectation without anything more cannot ipso facto give a right to invoke these principles.

6. The facts of the present case, if considered in the context of aforesaid legal principles, it would be clear that though the Petitioners can legitimately expect enjoyment of a reasonable open frontage, their expectation that nothing in front of their plots, even beyond the road would be constructed, would not be considered reasonable. There could neither be any such promise made by any

public authority nor the Petitioners could expect that nothing in front of their plots would ever be constructed. The word "frontage" must have a reasonable interpretation and if it is so interpreted, the right of enjoyment of frontage by the Petitioners could not extend beyond the road. Indeed, the road in front of the houses would indicate the outer limit of their frontage and hence their expectation cannot be considered reasonable.

7. The petition fails and is dismissed.