
Sita Devi & Others Vs Union Of India And Others

Special Appeal No. 846, 847, 848 Of 2019

Court: Uttarakhand High Court

Date of Decision: Sept. 24, 2019

Acts Referred:

National Highways Act, 1956 & Section 3D#Constitution Of India, 1950 & Article 226, 300A

Hon'ble Judges: Ramesh Ranganathan, CJ; Alok Kumar Verma, J

Bench: Division Bench

Advocate: Charanjeet Kaur, Manoj Kumar, Pradeep Joshi, Naresh Pant

Final Decision: Dismissed

Judgement

Ramesh Ranganathan, CJ

1. This Special Appeal is preferred against the order passed by the learned Single Judge in WPMS No. 2379 of 2019 dated 17.08.2019. The appellant

herein filed WPMS No.2379 of 2019 seeking a writ of certiorari to call for the record and to quash the joint inspection report dated 21.05.2018 by

which the respondents had unlawfully declared the land in question as State Government's land, without considering the fact that the said land

belonged to the appellants-writ petitioners situated at Village Rampura Dehat, Tehsil Rudrapur, District Udham Singh Nagar, which had already been

notified for acquisition under Section 3D of the National Highways Act vide Gazette Notification dated 11.08.2017.

2. The appellants-writ petitioners' case, in short, is that, though the subject lands have been proposed for acquisition by the National Highways

Authorities, and the subject lands form part of the notification issued under Section 3D of the National Highways Act, the officials of the Government

of Uttarakhand had forcefully sought to dispossess the petitioner from the subject land contending that it belonged to the State Government as was

established in the joint inspection report dated 21.05.2018. Since the joint inspection report dated 21.05.2018 records that the subject lands belong to

the State Government, and not to the appellants-writ petitioners, the appellants-writ petitioners invoked the jurisdiction of this Court under Article 226

of the Constitution of India.

3. In the order under appeal, the learned Single Judge observed that the Tehsildar, Rudrapur had caused a joint inspection, and had submitted a report

on 21.05.2018 holding that the appellants-writ petitioners had encroached upon Government land belonging to the Public Works Department; this joint

inspection report had been subjected to challenge in the writ petitions; the petitioner had contended that they had not encroached upon any part of

Government land, and their rice mills, including the boundary wall, were constructed over their private land; the joint inspection report, submitted by the

Revenue Authorities, belied the stand taken by the appellants-writ petitioners; there were disputed questions of fact involved in the writ petitions,

which could not be decided based on the affidavits; since the appellants-writ petitioners had raised a title dispute, which would require recording of

evidence, the Court was not inclined to entertain the writ petitions filed under Article 226 of the Constitution; and the appellants-writ petitioners could

approach the competent Civil/Revenue Court, if so advised. The writ petitions were dismissed in limine. Aggrieved thereby, the present appeal.

4. Ms. Charanjeet Kaur, learned counsel for the appellants-writ petitioners, would reiterate the submissions made before the learned Single Judge, and

would contend that the right to property is a constitutional right under Article 300-A of the Constitution of India; the appellants-writ petitioners could

only have been deprived of their property in accordance with law; in terms of the provisions of the National Highways Act, the NHAI had acquired

the subject land; and the learned Single Judge had erred in relegating the appellants-writ petitioners to the remedy of filing a civil suit. We must

express our inability to agree.

5. Article 300-A, no doubt, confers a right, on the owner of the land, not to be deprived of their property save by authority of law. The appellants-writ

petitioners' claim, in these writ petitions, of being the owner of the land is disputed by the State Government, and they contend that the appellants-

writ petitioners had encroached upon land belonging to the State Government. The question whether the appellants-writ petitioners are the owners of

the land, or whether they have encroached upon land belonging to the State Government, are all questions of fact which are not amenable to

examination in summary proceedings under Article 226 of the Constitution of India. Such factual disputes, more so those relating to title over the

property, can be better adjudicated, on the basis of the evidence adduced, by the competent Civil Court/Revenue Court.

6. The learned Single Judge was, in our view, justified in relegating the appellants-writ petitioners to avail the remedy of filing a civil suit or

approaching the Revenue Court in this regard. While we see no reason to interfere, suffice it to make it clear that, in case the appellants-writ

petitioners avail such remedies, the Civil Court/Revenue Court shall examine their claim, to be the owners of the land, in accordance with law,

uninfluenced by any observations made either in the order under appeal or in the order now passed by us.

7. The Special Appeals fail and, are accordingly, dismissed. No costs.