
Ram Dayal & Another Vs State Of H.P. & Others

Civil Writ Petition No.1349 Of 2019

Court: High Court Of Himachal Pradesh

Date of Decision: March 17, 2023

Acts Referred:

Constitution Of India, 1950 – Article 136, 142, 300A#Land Acquisition Act, 1894 – Section 4, 18, 28A

Hon'ble Judges: Sabina, J; Satyen Vaidya, J

Bench: Division Bench

Advocate: Anuj Gupta, Anup Rattan, Pranay Pratap Singh

Final Decision: Disposed Of

Judgement

Satyen Vaidya, J

1. By way of instant petition, petitioner has prayed for the following substantive relief:-

“That the respondents may kindly be directed to acquire the land in khasra Nos. Old 429, 431/2, 430 New Khasra Nos. 605, 606, 608, 773, 773/1

which is already in possession of the respondent No.3 and land in dispute belonging to the petitioners may kindly be acquired in accordance with the

procedure mentioned in the Land Acquisition Act and also appropriate compensation may kindly be paid after the assessment of the correct latest

market value to the petitioners.”

2. The case of petitioners is that they are co-owners of land comprised in khasra Nos. (old) 429, 431/2, 430 Khasra Nos. (new) 605, 606, 608, 773,

773/1, situated in Mohal Chakdyal, Tehsil Shimla (Rural), District Shimla, H.P. and the respondents have utilized the above noted land for construction

of Bhatta Kufar-Chakdyal Road in the year 1996. As per petitioners, respondent No.1 had issued notification dated 17.5.1996 under Section 4 of the

Land Acquisition Act, 1894 (for short “the Act”), showing its intention to acquire some land for construction of Bhatta Kufar-Chakdyal Road.

The land, as detailed in the notification under Section 4 of the Act, was finally acquired and was utilized for construction of Bhatta Kufar-Chakdyal

Road. The Land Acquisition Collector, vide award dated 12.4.1999, offered the market price to the owners of the land included in the notification

under Section 4 of the Act. Reference Petition filed under Section 18 of the Act against the award dated 12.4.1999, passed by the Land Acquisition

Collector, came to be decided by learned Reference Court on 25.5.2016. The persons who had not preferred references under Section 18 of the Act,

preferred petitions under Section 28A of the Act for redetermination of the compensation, after passing of the award by learned Reference Court.

3. The precise grievance of the petitioners is that without acquiring the land owned by petitioners and paying them any compensation, respondents

have utilized their valuable land. Petitioners remained under bonafide impression that they would also be awarded the same amount of compensation,

as was awarded to the other persons, whose land was utilized for construction of Bhatta Kufar-Chakdyal Road. Petitioners had also made written

representation to respondents on 17.9.2016 but the same also remained unanswered.

4. Respondents have contested the prayer of the petitioners, mainly on the ground that the claim of the petitioners is highly belated. They have

approached this Court after about twenty years and were not entitled to any relief. It is also urged that the land of the petitioners has been utilized for

construction of Bhatta Kufar-Chakdyal Road with their oral consent. Petitioners had voluntarily surrendered their land for construction of the Bhatta

Kufar-Chakdyal Road. Petitioners have enjoyed the facility of the road and thus, are stopped from filing the petition. Respondents have placed

reliance on the judgment passed by a Full Bench of this Court in Shankar Dass vs. State of H.P. in CWP No. 1966 of 2010, decided on 2.3.2013,

wherein it has been held that in cases of identical nature, the appropriate remedy was to approach the civil Court by filing regular suit. The

respondents have also placed reliance upon the judgment passed by Hon'ble Supreme Court in State of Maharashtra vs. Digamber, reported in

1995 (4) SCC 683 in support of their contention.

5. We have heard learned counsel for the parties and have also gone through the record carefully.

6. Respondents have not denied the factum of utilization of land of petitioners for construction of Bhatta Kufar-Chakdyal Road. It is also not in dispute

that the land of petitioners, so utilized by the respondents, was not acquired at any stage and the petitioners had not been paid the compensation. The

only ground agitated by respondents is regarding the delay on part of petitioners in approaching this Court. Additionally, contention regarding the oral

consent given by the petitioners for utilization of their land for construction of the road, has also been raised.

7. Recently, in Sukh Dutt Ratra and Another vs. State of Himachal Pradesh and Others, reported in (2022) 7 SCC 508, Hon'ble Supreme Court in

almost identical facts situation, as available in the instant case, after placing reliance upon Vidya Devi vs. State of H.P. (2020) 2 SCC 569, held as

under:-

“23. This Court, in Vidya Devi (supra) facing an almost identical set of facts and circumstances, rejected the contention of oral consent

to be baseless and outlined the responsibility of the State:

“12.9. In a democratic polity governed by the rule of law, the State could not have deprived a citizen of their property without the sanction of law.

Reliance is placed on the judgment of this Court in *Tukaram Kana Joshi v. Maharashtra Industrial Development Corpn.*, wherein it was held that the

State must comply with the procedure for acquisition, requisition, or any other permissible statutory mode. The State being a welfare State governed

by the rule of law cannot arrogate to itself a status beyond what is provided by the Constitution.

12.10. This Court in *State of Haryana v. Mukesh Kumar* held that the right to property is now considered to be not only a constitutional or statutory

right, but also a human right. Human rights have been considered in the realm of individual rights such as right to shelter, livelihood, health,

employment, etc. Human rights have gained a multifaceted dimension.

24. And with regards to the contention of delay and laches, this court went on to hold:

“12.12. The contention advanced by the State of delay and laches of the appellant in moving the Court is also liable to be rejected. Delay and

laches cannot be raised in a case of a continuing cause of action, or if the circumstances shock the judicial conscience of the Court. Condonation of

delay is a matter of judicial discretion, which must be exercised judiciously and reasonably in the facts and circumstances of a case. It will depend

upon the breach of fundamental rights, and the remedy claimed, and when and how the delay arose. There is no period of limitation prescribed for the

courts to exercise their constitutional jurisdiction to do substantial justice.

12.13. In a case where the demand for justice is so compelling, a constitutional court would exercise its jurisdiction with a view to promote justice, and

not defeat it.

25. Concluding that the forcible dispossession of a person of their private property without following due process of law, was violative of both their

human right, and constitutional right under Article 300-A, this court allowed the appeal. We find that the approach taken by this court in *Vidya Devi*

(supra) is squarely applicable to the nearly identical facts before us in the present case.

26. In view of the above discussion, in view of this court's extraordinary jurisdiction under Article 136 and 142 of the Constitution, the State is

hereby directed to treat the subject lands as a deemed acquisition and appropriately disburse compensation to the appellants in the same terms as the

order of the reference court dated 8 04.10.2005 in Land Ref. Petition No. 10-LAC/4 of 2004 (and consolidated matters). The Respondent-State is

directed, consequently to ensure that the appropriate Land Acquisition Collector computes the compensation, and disburses it to the appellants, within

four months from today. The appellants would also be entitled to consequential benefits of solatium, and interest on all sums payable under law w.e.f

16.10.2001 (i.e. date of issuance of notification under Section 4 of the Act), till the date of the impugned judgment, i.e. 12.09.2013.Ã¢â¬â¢

8. Thus, the grounds raised by the respondents are without substance and merit. The legal position has been well settled in Sukh Dutt Ratra (supra).

Petitioners cannot be deprived of their property without due process of law.

9. Admittedly, the Land Acquisition Collector offered the market price of the land utilized for construction of Bhatta Kufar-Chakdyal Road vide award

No.1/99 dated 12.4.1999. The reference under Section 18 of the Act was decided on 25.5.2016. It is not the case of respondents that they have

assailed the award dated 25.5.2016, passed by the learned Reference Court in LAC No. 1-5/4 of 2014, titled Muni Lal vs. State of H.P.

10. Learned Advocate General also placed reliance on the judgment dated 24.2.2023, passed by HonÃ¢â¬â¢ble Supreme Court in Civil Appeal No. 1278

of 2023, titled State of H.P. & others vs. Rajiv & another. After going through the judgment, so referred, we have not found a view different than the

view taken by HonÃ¢â¬â¢ble Supreme Court in Sukh Dutt Ratra, save and except, that in Civil appeal No. 1278 of 2023, the respondents therein were

not held entitled to the interest under the Land Acquisition Act in that case, till the filing of the writ petition.

11. The respondents in view of settled legal position, as noticed above, are liable to acquire the land of petitioners, utilized for construction of Bhatta

Kufar-Chakdyal Road without raising the plea of delay and oral consent of the petitioners. Thus, the instant petition is disposed of with a direction to

respondent No.1 to acquire the land of petitioners utilized for construction of Bhatta Kufar-Chakdyal Road and to pay them due and admissible

compensation strictly in accordance with law within four months from the date of passing of this judgment. Pending applications, if any, also stand

disposed of.