

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.7466 of 2023
Date of Decision: 13.11.2024

Sita Devi & Ors.

.....Petitioners

Versus

State of HP & Ors.

.....Respondents

Coram

Hon'ble Mr. Justice Sandeep Sharma, Judge.
Whether approved for reporting?

For the Petitioner: Mr. Maan Singh, Advocate.

For the respondents: Mr. Rajan Kahol, Mr. Vishal Panwar & Mr. B.C. Verma, Additional Advocate Generals, with Mr. Ravi Chauhan, Deputy Advocate General, for the respondent-State.

Sandeep Sharma, J. *(Oral)*

By way of instant petition, petitioners have prayed for the following main relief:

“(i) That a writ in the nature of mandamus may very kindly be issued to the respondents thereby directing them to initiate acquisition proceedings qua the land of the petitioners as detailed in Annexure P-2 and conclude the same in time bound manner and thereafter pay due and admissible compensation to them.”

2. It is the case of petitioners that though the respondents have utilized their lands for construction of 10.800 Kilometers Bhuika to Kotla Road in the years 1986-87, but the petitioners have not been paid any compensation, therefore, they are entitled for compensation

for their land utilized for aforesaid purpose by asserting that the petitioners had not consented either orally or in writing to let their land be utilized for public purpose without payment of compensation.

3. The petitioners and other interested persons had approached the respondents with a prayer to acquire the land utilized for above said road. The land owners were called by the Assistant Engineer, Sub Division, HPPWD, Larji and their joint statement was recorded, whereby the land owners including some of the petitioners specifically claimed the payment of compensation at the earliest. The petitioners have placed a copy of statement so recorded by the Assistant Engineer, Sub Division, HPPWD, Larji on 01.03.2017 as Annexure P-3. The petitioners have also placed reliance upon documents Annexures P-1, P-2, P-4 and P-5, which prima-facie reveal that the respondents had contemplated acquisition of the land for Bhuika to Kotla Road and some details were prepared.

4. Respondents in their reply have not denied the fact that the land of the petitioners has been utilized for the construction of Bhuika to Kotla Road. Claim of the petitioners, however, has been contested on the grounds that it is highly belated and the land of the petitioners was utilized with their verbal consent for their benefit. Reliance has been placed on the judgment passed by Full Bench of this Court in **CWP No.1966 of 2010**, titled **Shankar Dass vs. State of**

H.P. and the judgment passed by the Hon'ble Supreme Court in the matter of **State of Maharashtra vs. Digamber (1995 (4) SCC 683**, to assert that the petitioners were not entitled to any claim of compensation on account of delay and laches.

5. I have heard learned counsel for the parties and have also gone through the records of the case carefully.

6. The grounds on which the respondents have resisted the claim of the petitioners is two-fold. Firstly, the claim of petitioners is sought to be defeated on account of delay and laches and secondly on the ground that the petitioners or their predecessor-in-interest had verbally consented for utilization of their respective lands for construction of road.

7. 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 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."

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. In view of the settled legal position, as noticed above, the respondents are liable to pay compensation to the petitioners after acquiring their respective lands.

10. Consequently, in view of discussion made hereinabove, the instant petition is allowed with a direction to respondents to acquire the land of petitioners utilized for construction of Bhuika to Kotla 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.

The petition is disposed of in aforesaid terms alongwith pending application(s) if any.

November 13, 2024

(Sunil)

**(Sandeep Sharma),
Judge**