IN THE HIGH COURT OF HIMACHAL PRADESH
AT SHIMLA

CWP No.8361 of 2021
Reserved on: 22.06.2023
Decided on: 28.06.2023

Krishan Lal ...Petitioner

Versus

State of H.P. & others ...Respondents

Coram
The Hon'ble Mr. Justice M.S. Ramachandra Rao, Chief Justice
The Hon'ble Mr. Justice Ajay Mohan Goel, Judge

Whether approved for reporting?

For the petitioner: Mr. Rajiv Rai, Advocate.

For the respondents: Mr. Anup Rattan, Advocate General with M/s Rakesh Dhaulta and Pranay Pratap Singh, Additional Advocate Generals and M/s Arsh Rattan and Gautam Sood, Deputy Advocate Generals, for the respondents-State.

M.S. Ramachandra Rao, Chief Justice

The petitioner is a permanent resident of District Kinnaur, Himachal Pradesh.

2) He filed this writ petition challenging Annexure P-1 order dt. 27th July, 2021, passed by the Additional Chief Secretary (Forests) to the Government of Himachal Pradesh. The said order has been passed pursuant to the direction given by this Court on 17.05.2019 in CWP No.2368 of 2015 filed by the petitioner.

CWP No.2368 of 2015

3) The petitioner had filed the said Writ Petition CWP No.2368 of 2015 contending that in 1955 he was granted Nautor of 9 bighas and 12 biswas of land vide mutation No.2148 in Khasra No.512/1 in Mauza up-Mohal Akpa, Tehsil Moorang, District Kinnaur, Himachal Pradesh; that during the course of settlement, which took place in the year 1977-78, Khasra No.512/1 was converted into Khasra No.467; in 1997-98, Forest Department started constructing the officers quarters on his land which was objected to by him; that he had filed an application before the authorities in this regard; on his request, land was demarcated on 26.02.2009 by the Assistant Collector 1st Grade, Tehsil Moorang, District Kinnaur, in the presence of officers of the Forest Department of the State Government; and it was found that the Forest Department had encroached upon approximately 2 bighas of his land; since his requests were to the Forest Department for vacating the said land was not heeded by them, he filed CWP No.2638 of 2015.

4) The respondents contested the said writ petition alleging that Nautor land was granted in 1955-56 to the petitioner, but the land was not cultivated by him immediately after sanction because as per the Rule, the land was required to be cultivated within a period

of two years from the date of the delivery of the possession. They also contended that the petitioner never remained in possession of the land in question and had not raised any objection when the construction was started by the Forest Department in 1993-94. It is also alleged that the demarcation carried out by the Field Kanungo was not valid as he was not competent to demarcate the land. It is also stated that the Writ petition is not maintainable as there were disputed questions of fact.

This Court then disposed of the said Writ petition on 17.05.2019 directing the 1st respondent to look into the grievance of the petitioner and thereafter pass appropriate orders, after taking stock of the factual aspect of the matter.

The petitioner was directed to file a detailed representation to the respondents within four weeks and the same was directed to be decided by the respondents by passing a speaking order within four months.

If need be, respondent No.1 was also directed to order fresh fresh demarcation of the land to put an end to the controversy.

The 1st respondent was also directed to consider the contention of the State that the land stood resumed by it and the contrary stand of the petitioner that it was not so resumed.

5) Thereafter, the petitioner made representation to the 1st respondent, Annexure P-11 dt. 13.07.2019, as directed in the order passed by this Court in CWP No.2368 of 2015, which resulted in the passing of the impugned order by the 1st respondent.

Reasoning in the impugned order

6) In the impugned order, the 1st respondent rejected the plea of the petitioner for vacating the subject land by giving the following reasons:

(a) Land ad-measuring 9 bighas and 17 biswas was granted Nautor to the petitioner in the year 1955 and entered in the revenue record in Khasra No.512/1 and in the settlement which took place in 1977-78, Khasra No.512/1 was converted into Khasra No.467.

(b) The petitioner did not cultivate the land in the two years period from the date of handing over of possession.

(c) The Forest Department established a nursery therein during 1987-88 and then constructed office building and part of office compound during 1991-92 in part of the land in question treating it as Government/Forest land.

(d) No objection whatsoever was raised by the petitioner when the construction was started by the Forest Department during 1993-94 and even when construction was over.

(e) There was demarcation done on 26.02.2009 by the Field Kanungo on the basis of latest revenue records, but he had no competency to do the demarcation and old revenue record was not available.

(f) There was a further demarcation by the Tehsildar, Moorang on 05.12.2011 and he found that the Forest Department had constructed a seed store in Khasra No.467/1, measuring 00-01-08 hac and office building in Khasra No.467/2, measuring 00-01-76 hac, but even this demarcation was not conducted on the basis of old revenue record.

(g) After this Court passed orders on 17.05.2019 in CWP No.2368 of 2015 and after the petitioner made representation on 13.07.2019 to the 1st respondent, a hearing was held on 03.12.2020 and it was decided to get fresh demarcation of the land in question on the basis of old revenue record and the Deputy Commissioner, Kinnaur was asked to locate the old revenue record and the

disputed land demarcated afresh by collating information both from the old and new revenue records pertaining to said land.

(h) The Deputy Commissioner, Kinnaur was also directed to look into the aspect as to whether the land stood resumed by the State or not and to give a fact finding report.

(i) Fresh demarcation was done on 06.07.2020 by Assistant Collector-1st Grade, who submitted a report through Deputy Commissioner on 31.08.2020, but the Deputy Commissioner informed through letter dt. 25.11.2020 that in the demarcation report there was no mention as to whether old revenue record was located, whether the disputed land was demarcated afresh by collating information both from old and new revenue records, and the report was also silent as to whether the disputed land stood resumed by the State or not.

(j) The 1st respondent called a meeting of the officers of the Forest Department and officers of the Revenue Department on 23.07.2021 and saw the revenue record produced by the Revenue Department officials.

(k) Though the revenue record showed that the Nautor was granted in 1955-56, it was not put to use, but the Forest Department had put the land for forest management use since 1987-88.

(l) The land was not found cultivated and nobody raised any objection from the petitioner's side till 2009 when the land was demarcated for the first time.

(m) There was construction of office buildings/other buildings and nursery of Forest Department over 00-14-89 hac. of land in question.

(n) *The Tehsildar, Moorang informed on 23.07.2021 that old record was not traceable.*

(o) *It is not clear whether the land was resumed by the Government at any stage or not.*

(p) The Forest Department has spent more than Rs.47.00 lacs for construction of the building and infrastructure and there was no objection thereto till 2009.

(q) Therefore, the Forest Department should retain the land on which it has created public assets and the claim of the petitioner for delivery of the said land of 00-14-89 hac. cannot be accepted. As

regards remaining land question of assumption of same or not is left open to be decided by the Deputy Commissioner, Kinnaur.

The instant Writ Petition

7) Assailing the same this Writ petition is filed.

The consideration by the Court

8) Perusal of the above order of the 1st respondent indicates that:

(i) There was Nautor granted as per Nautor Rules to the petitioner of 9 bighas and 17 biswas in Khasra No.512/1, which was then converted into Khasra No.467.

(ii) Old revenue records were not available.

(iii) When such old revenue records were available, it would not have been possible for 1st respondent to come to a conclusion that petitioner had not cultivated the land between 1955-57. We fail to see how, while passing the impugned order on 27.07.2021, the 1st respondent could have come to the conclusion about non-cultivation of the subject land by the petitioner in 1955-57 in the absence of any record unless she claims to be clairvoyant or possessed of mystical powers to go back in time and visualize the cultivation or lack of it on the land during the said period. This

finding is clearly perverse, based on no evidence and unsustainable.

(iv) There is no material to show that the land was resumed by the State.

(v) The burden to establish the said fact of resumption of land is on the State, and since it has failed in that regard, the land continued to be the land of the petitioner and cannot be said to belong to the State and it cannot be permitted to be put to use by the State in a manner violative of Article 300A of the Constitution of India.

(vi) There is no record to show that the petitioner had given consent for use of the land by the Forest Department either for a nursery or for making construction of Range office-cum-residents, lawn and guard quarters therein.

(vii) The petitioner being an innocent tribal aged 94 years probably did not retain the representations given by him in the past opposing use of this land by the Forest Department, but the Forest Department cannot take advantage of the same particularly when the issue is being agitated, according to the petitioner, from the time such construction was made on his land and when at his

instance a demarcation was done on 26.02.2009, 05.12.2011 and again on 06.07.2020.

9) In the absence of any material to show that the land was resumed by the Government on the ground of non-cultivation of the same, it has to be held that the Forest Department acted illegally, arbitrarily and in violation of Article 14 and 300A of the Constitution of India in utilizing the land given to the petitioner without paying any market value compensation for the same.

10) As held by the Supreme Court in ***Hari Krishna Mandir Trust vs State of Maharashtra and others,***[1] though the right to property is not a fundamental right, it is still a constitutional right under Article 300A of the Constitution of India and also a human right; in view of the mandate of Article 300A, no person can be deprived of his property save by the authority of law; though the State possesses the power to take or control the property of the owner of the land for the benefit of public, it is obliged to compensate the injury by making just compensation. The Supreme Court held that though the right to claim compensation or the obligation of the State to pay compensation to a person who is deprived of his property is not expressly provided in Article 300A

[1](2020) 9 SCC 356

of the Constitution, it is in-built in the said Article and the State, seeking to acquire private property for public purpose, cannot say that no compensation shall be paid. It also held that the High Courts exercising their jurisdiction under Article 226 of the Constitution of India, not only have the power to issue a Writ of Mandamus or in the nature of Mandamus, but are duty bound to exercise such power, where the Government or a public authority has failed to exercise or has wrongly exercised discretion conferred upon it by a Statute, or a rule, or a policy decision of the Government or has exercised such discretion malafide, or on irrelevant consideration. In all such cases, the High Court must issue a Writ of Mandamus and give directions to compel performance in an appropriate and lawful manner of the discretion conferred upon the Government or a public authority. In appropriate cases, it held that in order to prevent injustice to the parties, the Court may itself pass an order or give directions which the Government or the public authorities should have passed, had it properly and lawfully exercised its discretion. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined and the High Court has

jurisdiction in a petition under Article 226 to try issues both of fact and law.

11) Similar view was also taken in ***D.B. Basnett vs. Collector, East District, Gangtok, Sikkim and another***[2]**.**

In that case, certain private land was found by the owner in March 2002 to have been wrongly encroached and trespassed by the Agriculture Department of the Government of Sikkim which was using it as an agricultural farm. He got issued a notice under Section 80 of the Code of Civil Procedure, 1908 alleging trespass and seeking possession. When there was no response to this notice he filed a suit before the Court of District Judge (E&N), Gangtok, Sikkim, but the suit was dismissed on 31.10.2006 on the ground of limitation and also on merits.

Appeal filed against the said judgment was also dismissed by the High Court.

The Agriculture Department had contested the proceedings stating that it had followed due process while acquiring the land in 1980 and had even paid compensation and the suit was also barred by limitation.

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[2](2020) 4 SCC 572

The Supreme Court allowed the appeal of land owner. It held that there was no evidence that the land was acquired by initiating process under Section 4 of the Land Acquisition Act, 1894 or by issuance of a declaration thereafter. There was also no material to show that the compensation was paid or consent was obtained for acquisition. It held that following the procedure under the Land Acquisition Act, 1984, is mandatory and an entry into premises without complying with the same would result in the entry being unlawful. It concluded that the respondents had failed to establish that they acquired the land in accordance with law and pay due compensation and directed restoration of possession and also payment of damages for illegal use and occupation of the same for the period of three years prior to the issuance of the suit notice. These principles were again reiterated in ***B.K. Ravichandra and others vs. Union of India and others***[3] and ***Sukh Dutt Ratra and another vs. State of Himachal Pradesh & others***[4]**.**

12) In ***Sukh Dutt Ratra*** (4 Supra) , the appellants land had been utilized for construction of road in 1972-73 without initiating any proceedings for acquisition and without paying any compensation. When the petitioner filed a writ petition on the basis of relief

[3](2021) 14 SCC 703
[4](2022) 7 SCC 508

granted to other owners whose land was so acquired, the said Writ petition was dismissed by the High Court holding that there were disputed questions of law and fact for determination on the starting point of limitation, which cannot be adjudicated in the Writ proceeding and the petitioners were given liberty to approach the Civil Court.

The Supreme Court reversed the said decision and held that nobody can be deprived of liberty or property without due process, or authorization of law and the State has a higher responsibility in demonstrating that it has acted within the confines of legality, and had not tarnished the basic principle of *the rule of law*.

It held that State, merely on the ground of delay and laches, cannot evade its legal responsibility towards those from whom private property has been expropriated. It observed that the State was initiating acquisition proceedings selectively and not in every case like that of the appellants whose land was taken, and at every stage, it sought to shirk its responsibility of acquiring land required for public use in the manner prescribed by law. It held that the State cannot shield itself behind the ground of delay and laches in such a situation as there cannot be a limitation to doing justice.

It also rejected the plea alleged verbal consent or lack of objection on the ground that no material was placed on record to substantiate the said plea and held that the State was unable to produce any evidence indicating that the land of the appellant had been taken over or acquired in the manner known to law, or that it had ever paid any compensation.

It declared that there is no period of limitation prescribed for the courts to exercise their constitutional jurisdiction to do substantial justice. It directed the State to treat the subject land as a deemed acquisition and disburse compensation to the appellants therein in terms of similar orders passed in other cases within four months.

13) Having regard to all these precedents and the principles laid down therein, this Court has a choice of either restoring the land measuring 00-14-89 hac., situated in khasra No.467/1 and 467/2, Mauza up-Mohal Akpa Khas, Tehsil Moorang, District Kinnnaur, H.P. to him as per demarcation report dated 24.07.2020 *or* to direct payment of compensation to him under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

14) Having regard to the fact that the said extent of land has already been put to use by the State, restoring the said land to the petitioner may not be appropriate in public interest.

15) Therefore, we allow the Writ Petition; quash the order dt. 27.07.2021 passed by respondent no.1 as arbitrary, illegal, perverse, violative of Article 14 and 300A of the Constitution of India and also on the ground that findings therein are without evidence; and direct the respondents to pay market value compensation to the petitioner under the Land Acquisition Act,1894 treating the land as having been acquired by the State on 1.1.1993 (since it is admitted that construction was made therein in 1993-94) and disburse the compensation, in accordance with the above statute with all statutory benefits there under within eight weeks. The respondents shall also pay costs of Rs.10,000/- to the petitioner within 4 weeks.

16) Pending application(s), if any, shall also stand disposed of.

(M.S. Ramachandra Rao)
Chief Justice

(Ajay Mohan Goel)
Judge

June 28, 2023
(vt)