

STATE OF HIMACHAL PRADESH & ORS.

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v.

RAJIV AND ANR.

(Civil Appeal Nos.1278 of 2023)

FEBRUARY 24, 2023

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[M. R. SHAH AND C. T. RAVIKUMAR, JJ.]

Land Acquisition Act, 1894 – s.4 – Land in question was used by the State for construction of road in the year 1996, however, no compensation was paid and the land was used without acquiring it under the provisions of the 1894 Act – Writ petition filed by respondents-land owners in 2016 –Allowed by Single Judge, appellants directed to initiate the process for acquisition of the land in accordance with law – Division Bench dismissed the LPA filed by the appellants on ground of limitation – Held: When the writ petition and the claim of the land owners to claim the compensation for the land has been opposed by the State solely on the ground of delay and laches, the owners of the land used by the State for construction of the road shall be entitled to the compensation for their lands, on certain conditions, which was used by the State without acquisition – 17.05.1996 (the date of the notification issued u/s.4 for acquisition of the land initially, however was permitted to lapse) be treated as the deemed date of acquisition u/s.4 – Land owners entitled to the compensation considering the market price of the land in question used by the State for construction of the road as on 17.05.1996 – However, considering the fact that there was huge delay of 20 years in filing the writ petition, the land owners are not entitled to any interest under the 1894 Act from 17.05.1996 to the date of filing of the writ petition, but they are entitled to all the statutory benefits which may be available under the 1894 Act from 17.05.1996 – Constitution of India – Arts. 136, 142.

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Sukh Dutt Ratra & Anr. Vs State Of Himachal Pradesh & Ors. (2022) 7 SCC 505 : 2022 (4) JT 31 – referred to.

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Case Law Reference

(2022) (4) JT 31

referred to

Para 4.4

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A CIVIL APPELLATE JURISDICTION : Civil Appeal No.1278 of 2023.

From the Judgment and Order dated 01.10.2020 of the High Court of Himachal Pradesh at Shimla in CMPM No.1375 of 2019.

B Abhimanyu Jhamba, Ms. Thonpinao Thangal, Samir Ali Khan, Ms. Hatneimawi, Shivam Prashar, Nikhil Jagotra, Ms. Richa Bharti, Advs. for the Appellants.

Ms. Radhika Gautam, Adv. for the Respondent.

The Judgment of the Court was delivered by

C **M. R. SHAH, J.**

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.10.2020 passed by the High Court of Himachal Pradesh in CMP (M) No.1375 of 2019 in LPA No.50 of 2020 by which the Division Bench of the High Court has refused to condone the delay in preferring the LPA against the judgment and order passed by the learned Single Judge passed in CWP No.771 of 2016, the State of Himachal Pradesh has preferred the present appeal.

2. Though the present appeal is against the impugned order passed by the Division Bench of the High Court refusing to condone the delay in preferring the LPA, instead of remanding the matter to the Division Bench to decide the appeal on merits and to consider the legality and validity of the judgment and order passed by the Hon'ble Judge, we have heard the learned counsel appearing on behalf of the respective parties on merits against the judgment and order passed by the learned Single Judge.

F 2.1 That the respondents herein - original writ petitioners filed the writ petition before the learned Single Judge of the High Court being CWP No.771 of 2016 and prayed for the following reliefs:

G “(i) That the respondents may be directed to produce entire record in connection with construction work of road from village Banuti to village Loharb in Tehsil and District Shimla along with entire record of the remaining portion from Loharb to Mauja Pahar Tehsil showing the process and proceeding which were started for acquisition of land and for payment of amount of compensation.

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(ii) That the respondent may be directed not to deprive the petitioners of their property without adopting due process of law and that they should act in accordance with law and make payment of amount of compensation as per provision law. A

(iii) That in case the respondents are, not ready and willing to start and complete acquisition proceeding and make payment of amount of compensation in that event they may be directed to hand over the physical possession of the land in question to the petitioner and also they may be held liable to pay use and occupation charges from the period from 1996 to date. B

(iv) Any other suitable relief as consider just and proper under the facts and circumstances of the petition may kindly be granted to petitioners.” C

2.2 It was the case on behalf of the original writ petitioners that the land in question was utilized by the State for the construction of Banuti to Pahal Road as far as back in the year 1996, however, till date, no compensation in view of the same has been paid to them. The petition was opposed by the State by filing a reply contending *inter alia* that at the time when the road was constructed through the land of the writ petitioners, it was on their request and on the condition that they will not claim any compensation. It was submitted that however at that time no written document was executed in this respect. It was submitted in the reply that due to this reason the construction work of the road was completed without acquisition proceedings by the State Government. It was also submitted that the road was constructed on the demand of public of the area including the writ petitioners. It was submitted that had there been any truth in the plea of the writ petitioners, the writ petitioners would have raised the objection during the long period of 20 years. D E F

2.3 Having heard learned counsel appearing on behalf of the original writ petitioners as well as the State and taking into consideration the fact that some portion of the land of the writ petitioners has been utilized for the purpose of construction of the road and no compensation has been paid and the land has been used without acquiring the land under the provisions of the Land Acquisition Act, 1894 (hereinafter referred to as ‘the Act, 1894’), the learned Single Judge allowed the writ petition and directed the appellants to initiate the process for acquisition of the land of the writ petitioners in accordance with law. G H

A 2.4 Feeling aggrieved and dissatisfied with the judgment and order passed by the learned Single Judge, the State preferred the Letters Patent Appeal before the Division Bench of the High Court allowing the delay of 354 days in preferring the LPA. By the impugned order the Division Bench of the High Court has refused to condone the delay and consequently has dismissed the LPA on the ground of limitation. Hence,
B the present appeal.

C 3. Shri Abhimanyu Jhamba, learned counsel appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the learned Single Judge has materially erred in directing to initiate the process for acquisition of the land of the original writ petitioners in a writ petition which was filed after a period of 21 years from the date of the use of the land in question which was used for the construction of road.

D 3.1 It is submitted that before the learned Single Judge it was the specific case on behalf of the State that the land was used with the consent of the original writ petitioners and the same was done on the request of the writ petitioners and with condition that they will not claim compensation for the same.

E 3.2 Thus, the impugned judgment and order passed by the learned Single Judge has been assailed mainly on the ground of delay and laches.

F 4. Present appeal is vehemently opposed by Ms. Radhika Gautam, learned counsel appearing on behalf of the original writ petitioners.

F 4.1 It is submitted that nothing is on record that at the relevant time the original writ petitioners consented for the use of their land for construction of road without claiming compensation for the same.

G 4.2 It is vehemently submitted that as such initially a notification under Section 4 of the Act, 1894 was issued for acquisition of the land at Village Tikkari on 17.05.1996, however the notification so issued under Section 4 of the Act, 1894 was permitted to lapse.

G 4.3 It is submitted that thereafter neither the fresh acquisition proceedings were initiated nor even the compensation with respect to the land used for construction of road has been paid.

H 4.4 It is submitted that the State on the ground of delay and laches cannot evade its legal responsibility towards those from whom private property has been expropriated. Reliance is placed upon the recent

decision of this Court in the case of **Sukh Dutt Ratra and Anr. Vs. State of Himachal Pradesh and Ors., (2022) 7 SCC 505.** A

4.5 Relying upon the aforesaid decision, it is further submitted that as observed and held by this Court in the said decision in absence of written consent to voluntarily give up their land, the land owners are entitled to the compensation in terms of law. B

5. Having heard learned counsel appearing for the respective parties and in the facts and circumstances of the case and when the writ petition and the claim of the original writ petitioners to claim the compensation for the land used for construction of the road has been opposed by the State solely on the ground of delay and laches, we are of the opinion that on the certain conditions which shall be considered herein below the original writ petitioners – owners of the land used by the State for construction of the road shall be entitled to the compensation for their lands which have been used by the State without acquisition under the Act, 1894. C

5.1 At this stage, it is required to be noted that in the present case as such initially the Notification under Section 4 was issued for acquisition of the land at Village Tikkari on 17.05.1996. However thereafter the notification so issued under Section 4 of the Act, 1894 was permitted to lapse. Therefore, 17.05.1996 can be directed to be treated as a deemed acquisition on that day and the original landowners may be awarded the compensation considering the market price as on 17.05.1996, however with all other statutory benefits excluding the interest from 17.05.1996 till the writ petition was filed before the High Court. If the aforesaid order is passed in exercise of this Court's extra ordinary jurisdiction under Articles 136 & 142 of the Constitution, the same can be said to be just and proper and doing the complete justice between the parties. D E F

6. In view of the above and for the reasons stated above, present appeal stands disposed of by directing that 17.05.1996 be treated as the deemed date of acquisition under Section 4 of the Act, 1894 and the original owners/writ petitioners shall be entitled to the compensation considering the market price of the land in question used by the State for construction of the road as on 17.05.1996. However, considering the fact that there was a huge delay of 20 years in filing the writ petition before the High Court, we direct that though the original writ petitioners shall be entitled to all the statutory benefits which may be available under the Act, 1894 from 17.05.1996, however they shall not be entitled to any G H

- A interest under the Act, 1894 from 17.05.1996 to the date of filing of the writ petition.

Now the State/appropriate authority to calculate the amount of compensation as above after giving an opportunity to the original writ petitioners to lead the evidence on the market price as on 17.05.1996

- B and thereafter to make the payment of compensation as above within a period of 2 months from the date of actual calculation of the amount of compensation. However, the entire exercise shall be completed within a period of six months from today.

Present appeal stands allowed/disposed of in terms of the above.

- C However, in the facts and circumstances of the case there shall be no order as to costs.

Divya Pandey
(Assisted by : Abhishek Pratap Singh and Roopanshi Virang, LCRAs)

Appeal disposed of.