



IN THE HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

CWP No.6660 of 2021

Decided on: 25th November, 2022

Sukh Dev and others

....Petitioners

Versus

Union of India and others

...Respondents

Coram

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge

¹ *Whether approved for reporting? Yes*

For the petitioners:

Mr. Anuj Nag, Advocate.

For the respondents:

Mr. Janesh Gupta, Advocate, for respondents No. 1, 2 and 4.

Mr. Yudhvir Singh Thakur, Deputy Advocate General, for respondent No.3.

Jyotsna Rewal Dua, Judge

Petitioners' land stand acquired by the respondents under the provisions of the National Highways Act, 1956. Award to that regard has been passed in their favour. However, compensation amount has not been paid to them. Hence, they seek compensation in terms of the award dated 15.03.2021 passed by the respondents for acquisition of their lands.

2. Petitioners' **simple case** is that: -

2(i) The respondents required the land for building

¹ *Whether reporters of Local Papers may be allowed to see the judgment? Yes*

(widening/four laning etc.), maintenance, management and operation of NH-154 on the stretch of land from Km 42.000 to Km 51.000 (Pathankot-Mandi section). The respondents declared their intention to acquire the land within this stretch of road. Notification under Section 3(A) of the National Highways Act, 1956 (the Act hereinafter), was issued on 09.02.2018, expressing the intention to acquire the land measuring 10-92-98 Hectares on the stretch in question. Petitioners' lands were also intended to be acquired under the said Notification.

2(ii) No Notification for declaration of acquisition as was required under Sections 3(D) of the Act was issued within a period of one year from the date of publication of Notification under Section 3A. In spite of this, an award of compensation under Section 3(G) and 3(H) of the Act was passed on 31.12.2020. The award included petitioners' land as well.

2(iii) Realizing that no Notification under Section 3(D) within the period permissible under the Act, was issued, therefore, fresh exercise for acquiring the land was undertaken by the respondents. The Notification under Section 3(A) was re-issued on 20.10.2020 in accordance with law. Notification under Section 3(D) was issued on 11.12.2020. In terms of Section 3(G) (3), notice inviting claims from the land owners/persons interested therein by or before 07.03.2021 was also issued by the respondents in

February, 2021. Final award of compensation under Sections 3(G) and 3(H) of the Act, in respect of acquisition of lands in question, was passed on 15.03.2021.

2(iv) Petitioners' lands form part of the land acquired by the respondents and were also part of the award dated 15.03.2021.

3. The above facts have not been disputed by the contesting respondents No. 2 and 4 (National Highway Authority of India) (NHAI in short) in the short affidavit filed by them to the writ petition. The respondents No. 1 and 4 have not filed reply to the writ petition.

4. The controversy

The limited grievance of the petitioners is that even after passing of the award dated 15.03.2021 (Annexure P-2), the respondents have not released the compensation amount due and admissible to them. The only defence taken by the contesting respondent-NHAI in its reply is that:-

“the petitioners' lands are situated over the tunnel falling beyond 60 mts, as such, the land in question is not required for creating any tunnel related infrastructure or for the construction of the project highway.....in the aforesaid circumstances, deponent most humbly submits that since the land in question is not required for construction, the same may please be utilized by the landowners and NHAI may please be divested from such land so as

to have no right whatsoever in the land in question on account of various notifications issued under National Highways Act, 1956. The land owner may please use the land in question as may be permissible under the law. Furthermore, in case such land is required any time in future, same will be acquired as per the prescribed procedure as may be permissible at the relevant time.”

5. Observations

The gist of the stand taken by the respondent-NHAI is that it had though acquired petitioners' lands in question, however, the aforesaid lands are now surplus and not required by it. The NHAI has prayed that it should be divested from the acquired land of the petitioners and landowners can utilize the land in the manner they deem proper. The stand taken by the respondent-NHAI is completely *dehors* the settled legal position. Regarding vesting and divesting of acquired land, in **(2020) 8 SCC 129, [Indore Development Authority Vs. Manohar Lal and others]** it was held that once title vests in the State under Section 17 of the Land Acquisition Act, 1894, divesting of title is not a possibility at all..... Once vesting takes place and is with possession after which a person who remains in possession is only a trespasser, not in rightful possession and vesting contemplates absolute title, possession in the State..... Section 24 of the Right to Fair Compensation Act, 2013, does not intend to take away

vested rights. This is because there is no specific provision taking away or divesting title to the land, which had originally vested with the State, or divesting the title or interest of beneficiaries or third-party transferees of such land which they had lawfully acquired, through sales or transfers. There is neither a specific provision made for divesting, nor does the Act of 2013 by necessary intendment, imply such a drastic consequence. Divesting cannot be said to have been intended. **(2012) 12 SCC 133** titled **V. Chandershekar and another Vs. Administrative Officer and others**, holds that once the land is vested in the State free from all encumbrances it cannot be divested and proceedings under the Land Acquisition Act, 1894, would not lapse even if an award is not made within the statutory stipulated period. Land, once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any other purpose either. Some of the relevant paras from this judgment are as under: -

“25. It is a settled legal proposition, that once the land is vested in the State, free from all encumbrances, it cannot be divested and proceedings under the Act would not lapse, even if an award is not made within the statutorily stipulated period.

26. The said land, once acquired, cannot be restored to the tenure holders/persons-interested, even if it is not used for the purpose for which it was so acquired, or for any

other purpose either. The proceedings cannot be withdrawn/abandoned under the provisions of Section 48 of the Act, or under Section 21 of the General Clauses Act, once the possession of the land has been taken and the land vests in the State, free from all encumbrances.

27. *The meaning of the word 'vesting', has been considered by this Court time and again. In Fruit and Vegetable Merchants Union v. Delhi Improvement Trust, AIR 1957 SC 344, this Court held that the meaning of word 'vesting' varies as per the context of the Statute, under which the property vests. So far as the vesting under Sections 16 and 17 of the Act is concerned, the Court held as under.-*

"In the cases contemplated by Sections 16 and 17, the property acquired becomes the property of Government without any condition or ; limitations either as to title or possession. The legislature has made it clear that vesting of the property is not for any limited purpose or limited duration."

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30. *In Govt. of A.P. V. v. Syed Akbar , this Court considered this very issue and held that, once the land has vested in the State, it can neither be divested, by virtue of Section 48 of the Act, nor can it be reconveyed to the persons-interested/tenure holders, and that therefore, the question of restitution of possession to the tenure holder, does not arise."*

The Hon'ble Court summarized the law that once the land is acquired and it vests in the State, free from all encumbrances, it is not the concern of the land owner, whether the land is being used for the purpose for which it was acquired or for any other purpose. He becomes persona non-grata once the

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land vests in the State. He has a right to only receive compensation for the same, unless the acquisition proceeding is itself challenged. The State neither has the requisite power to reconvey the land to the person- interested, nor can such person claim any right of restitution on any ground, whatsoever, unless there is some statutory amendment to this effect.

Petitioners' lands have been acquired under the National Highways Act, 1956 read with provisions of the Right to Fair Compensation and Transparency in Land Acquisition Act, 2013. Notification under Section 3A of the National Highways Act was issued on 20.10.2020. Declaration of acquisition under Section 3D(1) was made vide notification issued on 11.12.2020. Section 3D(2) states that on publication of declaration under Section 3D(1), the land shall vest absolutely in Central Government free from all encumbrances. Petitioners' lands in question, thus, vested in the respondents on 11.12.2020. Notwithstanding this vestment under Section 3D of the National Highways Act even the award under the provisions of Section 3(G) & (H) of the Act was passed on 15.03.2021. The award presupposes taking over of possession of lands in question by the respondents in terms of Section 3(E) of the Act. Viewing from any angle, there is no escape from the conclusion that lands of petitioners stood completely vested in the respondents. There is no provision which permit divesting of land

as is requested by the respondents in their reply.

For the foregoing reasons, the writ petition is allowed.

The respondents are directed to release the compensation amount to the petitioners in terms of the award dated 15.03.2021 (Annexure P-2) within a period of four weeks from today.

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

Jyotsna Rewal Dua
Judge

November 25, 2022
R.Atal

High Court of H.P.