

IN THE HIGH COURT OF HIMACHAL PRADESH
SHIMLA

CWP No. 2529 of 2020

Reserved on 28.9.2020

Date of decision: 7.10.2020

Om Parkash & another ... Petitioners

versus

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

Coram:

The Hon'ble Mr. Justice Sureshwar Thakur, Judge.

The Hon'ble Mr. Justice Chander Bhusan Barowalia, Judge.

Whether approved for reporting?¹ Yes.

For the petitioner: Mr. Romesh Verma, Advocate.

For the respondents: Mr. Hemant Vaid, Addl. A.G.
with Mr. J. S. Guleria.

Sureshwar Thakur, J

The petitioners, seek a mandamus becoming pronounced, upon the respondents, qua, Dharampur-Rajpura road, becoming declared fit, for, plying of vehicles thereon, hence, for enabling the residents, of, the area

¹ Whether reporters of the local papers may be allowed to see the judgment?

concerned, to ensure the plying thereon(s), of, HRTC buses, for, theirs thereafter, availing the facility, of, making road communication(s) therefrom. Furthermore, directions are also strived, to be made upon the respondents, for, declaring illegal, and, nonest Annexure P-1, (i) wherethrough, the respondents became hence constrained, to, decline, the, making, of, a declaration, vis-a-vis, afore road being fit, for, plying vehicles, hence thereon, (ii) inasmuch as, completion of the afore road being made, subject to the land owners concerned, whose lands abut the afore link road, commencing from Dharampur-Rajpura, rather executing gift deeds, vis-a-vis, their apposite lands, and, qua the respondents.

2. The respondents, in the reply, meted by them, to the writ petition, also cast therein, the afore objections, for, theirs omitting, to, make, the declaration, as become(s) strived through the extant writ petition. The trite legal conundrum, hence besetting this Court, for, its becoming resolved, through, an adjudication being made thereon, (a)

is the validity, of, afore projected resistance qua the rendition, of, the espoused direction, inasmuch as, its hence falling within the domain, and, ambit, of, expostulation(s), of, law, and, within the notion, of, a, beneficent welfare State, hence conceiving, through a special legislation, the peremptory requirement(s), of, acquisition of apposite lands, hence for ensuring qua therethrough, the constitutional mandate(s), enshrined in Article 300-A, and, in Article 31 becoming not breached, and, rather therethroughs becoming enlivened.

3. The Hon'ble Apex Court in a decision, pronounced in case titled, as, **State of H.P. vs. Umed Ram**, reported in **AIR 1986 SC 847**, has made thereon, a, declaration, (a) vis-a-vis, the right to life created, through Article 31 of the Constitution of India, embracing not only mere human existence, but also quality of life, and, for residents of hilly areas, the access of road, is, the access to life. Furthermore, it also becomes expostulated therein, that, denial, of, access to road, to the residents of hilly

areas, would tantamount to denial to them, of, the constitutionally guaranteed right to life. Consequently, access to roads, vis-a-vis, the residents, of, hilly areas, is, an inbuilt component, of, the constitutionally guaranteed right to life, and, any denial thereof, to the residents of hilly areas, would tantamount, to the, afore constitutionally guaranteed fundamental right to life, hence becoming breached and infringed. In other words, the afore right, is, an inviolable fundamental right, and, does not brook, any, of the afore opposition(s) thereto, as, become projected by the State, nor does withstand any, hence free from compensation, rather, compulsive expropriation, of, land(s), and, properties, of, land owners.

4. Be that as it may, the respondents strived to deny the afore constitutionally guaranteed right to life, inasmuch as, the fundamental right to access to roads, vis-a-vis, the petitioners, (i) merely, upon a policy decision, becoming taken by them, inasmuch as, the construction of a public road, commencing from Dharampur-Rajpura,

becoming unamenable, for completion, (ii) as the petitioners, and, other land owners rather declining to execute gift deeds qua therewith, vis-a-vis, the respondents. The insurances, of, compliance(s), by the apposite respondents, upon, the afore apposite policy decision, as, taken by the respondents, rather by the writ petitioners, does visibly tantamount, to the respondents therethrough, striving to ensure untenable expropriation, of, the private properties, of, those land owners, whose lands abut the afore road, (iii) and, the afore forcible expropriation, as hence strived, through the afore policy decision, appears to visibly infringe the mandate(s), made, by the Hon'ble Apex Court, in a decision, rendered in, **Vidya Devi vs. State of H.P. & others**, and, reported in **2020 (2) SCC 569**, (iv) wherein it becomes expostulated, vis-a-vis, the afore denial, of, compensation to the land owners, despite his/her land becoming utilized, for, construction, of, a public road, bringing forth breaches, of, Article 300-A, and, of Article 31, of, the Constitution of

India, (v) moreso, when no compensation qua therewith, become assessed, in consonance with the apposite acquisition laws, (vi) moreover, thereupon hence breach has also become encumbered, upon, the, expostulation of law, hence enshrined, in, Umed Ram's case (supra).

5. Even though, right to property, is, a constitutional right, however, subject to compensation being assessed, vis-a-vis, the land owners concerned, and, whose lands, abut the public road concerned, whereupon, all the respondents, cannot breach, the afore fundamental right, as they strive to do, on anvil, of, an untenable infringing therewith rather policy decision, being taken by the Government. The respondent is a welfare State, and, is duty bound under law, to provide access to road facilities, to the petitioners, and, other residents, who upon, completion, of a public road, nomenclatured as, Dharampur-Rajpura, would enjoy the facility, of, plying their vehicles thereon(s), and, also would enjoy facility, of, plying thereon(s), of, HRTC buses, (i) and, when the

aforestated access to a road, is an insegregable component, of, the constitutionally guaranteed right, to life, (ii) thereupon, the afore constitutionally guaranteed right to life, cannot, at all be conceived to be breached, even through, the afore constitutionally void policy decision, being taken by the respondents. Furthermore, the aforestated policy decision, also manifestly breaches, the constitutional right, vested in private land owners concerned, through Article 300-A, and, Article 31, of, the Constitution of India, and, also the afore constitutionally guaranteed right of property, especially and reiteratedly, with, the afore policy decision, visibly appearing, to, hence militate thereagainst.

6. With the afore observations, the extant writ petition is allowed, and, in sequel, the respondents are directed to provide the facility of road to the petitioners, and, other residents, who become benefited, through completion of road Dharampur-Rajpura, and, the afore completion be ensured to be done, within six months, from

today, and, also within the afore period, the respondents are directed to initiate/recourse, the apposite statutory mechanism(s), for, granting compensation to the land owners, whose land abut the afore road, and who omit, to, execute the apposite gift deeds, with, the respondent(s) concerned. All pending applications, if any, also stand disposed of.

(Sureshwar Thakur)
Judge

(Chander Bhusan Barowalia)
Judge

7th October, 2020
(kck)

