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Court : Himachal Pradesh

Decided On : Jan-04-2006

Reported in : 2006(1)ShimLC322

Judge : V.K. Jhanji and; Surjit Singh, JJ.

Acts : Land Acquisition Act - Sections 4, 6, 7 and 48; ;[Constitution of India](#) - Article 226

Appeal No. : Civil Writ Petition No. 896 of 2005

Appellant : Bhupinder Kumar and ors.

Respondent : State of H.P. and ors.

Advocate for Def. : M.S. Chandel, Adv. General,; D.C. Pathik, Additional Adv. General for Respondent Nos. 1, 2, 4 and 5 a

Advocate for Pet/Ap. : D.D. Sood, Sr. Adv. and; Krian Lata, Adv.

Disposition : Petition dismissed

Judgement :

Surjit Singh, J.

1. Through the present writ petition, the petitioners seek the quashing of communication dated 28.5.2005, whereby their representation for de-notifying the

acquisition of their property has been rejected and also Annexures P-10, P-11 and P-11/A, i.e. notification under Section 4, declaration under Sections 6 and 7 of the Land Acquisition Act and the award of the Collector respectively, pertaining to the land of the petitioners, besides seeking a restraint order against the respondents from interfering in their possession over the property, sought to be got released from acquisition.

2. Certain property of the petitioners, described in the writ petition, was notified for acquisition in the year 1977. A writ petition, seeking the quashing of that notification, was filed soon after the issuance of the said notification, which was registered as CWP No. 43 of 1977. The Government issued another notification, under Section 4 of the Land Acquisition Act, for the acquisition of the same property in September, 1978. A C.M.P. was moved in the aforesaid Writ petition No. 43 of 1977, which was registered as CMP No. 1572 of 1979. Initially an order was passed on that application on 29.11.1979 staying dispossession of the writ petitioners from the property, by way of ad interim relief. However, vide order dated 30.3.1980, the aforesaid CMP No. 1572 of 1979 was dismissed with the observation that the acquisition stood completed as the award had been announced on 29.11.1979 and possession of the acquired land had also been taken by the Land Acquisition Collector and handed over to Housing Board, for which the land had been acquired. Ultimately the writ petition was also dismissed on merits, vide order dated 28.6.1985. An L.P.A. was filed against aforesaid order. During the pendency of the aforesaid L.P.A., again an attempt was made by the petitioners, by filing a C.M.P., to seek a restraint order against the respondents from dispossessing them. That C.M.P. was also dismissed with the finding that the possession of the acquired land had already been taken by the Land Acquisition Collector. Thereafter an appeal was filed in the Hon'ble Supreme Court against order dismissing the L.P.A. That too was dismissed, though as withdrawn. The writ petitioners thereafter made a representation to the Government for de-acquisition of a portion of the acquired property. That representation has been dismissed, vide communication dated 28.5.2005. Annexure P-21.

3. Petitioners' plea is that a portion of the acquired land, to the extent of 18 Bighas, is still in their possession and that this portion is not required by the respondents

for the purpose for which the acquisition had been made or for that for any other purpose and, therefore, the notification declaration and the award, pertaining to the acquisition of that portion of the property, be quashed and the order Annexure P-21, dismissing the representation, be also quashed and direction be issued to the respondents not to interfere in that portion of the land, which they claim to be still in their possession.

4. The aforesaid facts have been culled out from the pleadings, the documents as also the record of the earlier writ petition and the L.P.A., referred to here-in-above.

5. Respondents in their written reply have stated that possession of the property having already been taken, the question of de-acquisition does not arise and, therefore, the writ petition is liable to be dismissed. Also, it is alleged that the petitioners have suppressed material facts, inasmuch as they have not disclosed in the writ petition that after the dismissal of their writ petition, the L.P.A. and the appeal filed in the Hon'ble Supreme Court, they had filed a suit also in the Court of Senior Sub Judge, Solan, claiming declaration that they were in possession of the property, in question, and also seeking issuance of permanent prohibitory injunction, restraining the respondents from interfering in their possession and that in the said suit an application for grant of temporary injunction had also been moved, which was dismissed with the observation that they had been dispossessed from the property long back and the appeal filed in the Court of District Judge against that order was also dismissed and revision filed in this Court against the order of the District Judge too was dismissed.

6. We have heard the learned Counsel for the petitioners and perused the entire record.

7. This Court, while dealing with the CMPs., filed by the writ petitioners in Writ Petition No. 302 of 1979 and L.P.A. No. 7 of 1985, found that the petitioners stood dispossessed from the land, in question. Learned Counsel for the petitioners submitted that there was an admission by the respondents that the possession of the land, in question, was still with the petitioners. The submission cannot be accepted for there is already a finding by this Court in the earlier Civil Writ Petition and the L.P.A. that the writ petitioners stand dispossessed after the passing of the

award of the Collector. This finding operates as res judicata. Now, if the possession of the acquired property has already been taken from the petitioners pursuant to the acquisition process, the question of de-acquisition does not arise, because as per Section 48 of the Land Acquisition Act, the Government has liberty to withdraw from the acquisition of any land, of which possession has not been taken over by it. Further when the petitioners are out of possession, the question of issuance of an order of restraint against the respondents from interfering in the land, in question, does not arise. Also the petitioners have suppressed material facts, as noticed here-in-above, thereby rendering themselves disentitled to the extra ordinary remedy, under Article 226 of the [Constitution of India](#).

8. For the foregoing reasons, the writ petition is dismissed.

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