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Gopi Chand and ors Vs. State and ors

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Court : Rajasthan Jodhpur

Decided On : Dec-04-2012

Appellant : Gopi Chand and ors

Respondent : State and ors

Judgement :
S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 1 // 502 S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. .. Date of Order ::

4. h December 2012. HONBLE MR. JUSTICE DINESH MAHESHWARI Mr. Vikas Balia, for the petitioners. Mr. R.L. Jangid, Senior Advocate & AAG with Mr. H.S. Bishnoi, Assistant to AAG. Mr. Dron Kaushik, for the respondents. <<>> BY THE COURT: Having regard to the circumstances of the case and the issues involved, the matter has been heard finally at this stage itself. By way of this writ petition, the petitioners have put a challenge to the decision taken by the respondents in the meeting held on 11.06.2012 (Annex.

13) whereby approval has been extended for construction of Railway Over Bridge ('ROB') at Level Crossing ('LC') No. 121 at Sriganganagar in place of earlier proposal for construction of such ROB at LC No. 119 at Sriganganagar. The petitioners have asserted their rights in the matter with reference to the fact that they were holding agricultural land as comprised in Murabba No. 4 of Chak 2E Chhoti, District Sriganganagar and a part thereof was surrendered by them to the Government under the surrender deed dated S.B. CIVIL WRIT PETITION NO.

7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 2 // 27.01.2006 but with the condition that on the surrendered land, the State Government, Urban Improvement Trust or the Municipal Council shall construct only the ground level road and shall not construct any over bridge. It is submitted that the road has since been laid on the land in question and, on the remaining part of the land, the residential houses of the petitioners are situated. It is further submitted that upon arising the necessity of an over bridge for smooth flow of traffic across the city of Sriganganagar the respondents sought feasibility reports and ultimately, the feasibility reports was made in the manner that the necessary ROB was proposed at LC No. 119, which is practically the part of National Highway No.

15. It is also submitted that even the administrative sanction was issued by the Rajasthan Urban Infrastructure & Finance Development Corporation for construction of ROB at LC No. 119 only but then, the Collector, Sriganganagar, while brushing aside such specific feasibility reports and all other requirements, came out with his own proposition of providing such ROB at LC No.

121. It is submitted that such change of proposal for ROB at LC No. 121 now directly affects the petitioners inasmuch the ROB is sought to be constructed on or above the land surrendered by them. It is contended that the respondents are not entitled to do anything contrary to the stipulation contained in the deed of S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 3 // surrender wherein, the petitioners had specifically put a condition while surrendering their land free of cost that no ROB will be constructed thereupon. It is further submitted that the petitioners have made several representations in the matter including the one dated 15.12.2011 (Annex.

10) and another dated 18.02.2012 (Annex.

11) against the attempted action but such representations have not been given due consideration; and in the meeting held under the Chairmanship of the Chief Secretary to the Government of Rajasthan on 11.06.2012, for review of the progress of ROBs as per Budget Declarations for the years 2011-12 and 2012-13, approval was granted for construction of ROB at LC No. 121 in place of LC No.

119. The petitioners have attempted to submit that they were otherwise holding the property rights and could not have been deprived of such rights without due process of law; that when they made a surrender without charging anything but with the specific stipulation and the respondents accepted such surrender, the stipulation thereof remains equally binding on them. It is pointed out that the said stipulation formed a part of the order made by the Tehsildar (Revenue) on 18.04.2006 in acceptance of surrender. Thus, according to the petitioners, it is clear upon reading of the deed of surrender with the order of the Tehsildar that no ROB could be laid on the land surrendered by the petitioners. It is submitted that if at all the S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 4 // respondents seek to take any proceedings indicative of their right of compulsory acquisition in the interest of public then, the petitioners have a legal right to state their objections in conformity with the procedure envisaged by the Land Acquisition Act, 1894 and more particularly Section 5(A) thereof. It is submitted that the action as taken by the Collector, Sriganganagar and as approved in the meeting held on 11.06.2012 remains fundamentally illegal and operates towards infringement of the legal rights of the petitioners and hence, deserves to be interfered with. The respondents have filed a detailed reply to the petition submitting , inter alia, that in case of any grievance in the matter, and seeking performance of the terms of surrender deed, the writ petitioners are not justified in invoking writ jurisdiction of this Court without availing of alternative and efficacious remedies; and that the petition involves several questions of facts which cannot be determined in the writ jurisdiction. It is submitted that once the holdings have been surrendered for public purposes and in the national interest as stated, the petitioners cannot now dictate the terms as to how the land is to be used by the respondents. The respondents have also made the submissions seeking to justify their decision of construction of ROB at LC No. 121 in place of LC No. 119; and it is submitted that the construction of ROB at LC No. 121 is more beneficial to the Government as well as to S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 5 // the public at large. It is submitted that the project has been approved at all levels and then only, the respondents have proceeded ahead with award of the work for construction of ROB in question. In this writ petition, notices were accepted on behalf of the

respondents Nos. 1, 2 and 4 by the learned Additional Advocate General;and the learned counsel Mr. Dron Kaushik put in appearance on behalf of the respondent No.3. While posting the matter for 20.07.2012, the Court observed that it was expected of the learned Additional Advocate General to ascertain the reasons from the Collector concerned for changing the site for construction of ROB. Thereafter, on 17.08.2012, the learned Additional Advocate General submitted an undertaking that in pursuance of the NIT already issued, the contract for construction of Railway Over Bridge at location RLC 12.shall not be finalised until the next date. The matter was, thereafter, adjourned several times with the undertaking on behalf of the respondents having been continued. After having heard the learned counsel for the parties at some length and having examined the material that has been placed on record and that has been placed for perusal during the course of submissions, this Court is of the view that even when the aspects relating to facts may not be gone into in the extraordinary writ jurisdiction and the factual aspects S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 6 // essentially relate to administrative decisions; and even when the question as to where the ROB ought to be constructed is ultimately a matter to be decided by the respondents in accordance with law but, so far the petitioners are concerned, they cannot be said to be altogether some busy-bodies or the persons having absolutely no right in the matter to the extent that their submissions be not given any consideration by the authorities concerned. In other words, this Court is clearly of the view that the grievance as sought to be suggested by the petitioners and the representations as made by them ought to have acquired due attention of the authorities concerned before taking of the final decision in the matter. This Court would hasten to observe that herein, no comment is being made on the merits of the case either way but to the extent that the petitioners appear not to have been heard, the approach of the respondents cannot be countenanced particularly when the land in question has admittedly come in possession of the respondents only by way of surrender deed dated 27.01.2006. After extending opportunity of hearing to the petitioners on their representations, of course, the respondents can take objective decision in the matter but, altogether ignoring of the matter on the representations of the petitioners, cannot be approved. Thus, this Court is of the view that the petitioners

deserve to be extended an opportunity of hearing by the S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 7 // respondents and for that matter, it appears just and proper that when the earlier decision dated 11.06.2012 was taken under the Chairmanship of the Chief Secretary to the Government of Rajasthan, the learned Chief Secretary himself should take into consideration the representations as made and as sought to be made by the petitioners and should take an objective decision in the matter after affording an opportunity of personal hearing to the petitioners. It goes without saying that in this regard, the learned Chief Secretary may also take into consideration the views to be expressed by the Collector concerned or any other relevant authority, as deemed fit and necessary. In view of the above, this writ petition is finally disposed of with directions to the Chief Secretary to the Government of Rajasthan to take a decision upon the representations of the petitioners as already made, or as sought to be made after extending an opportunity of personal hearing to the petitioners and to the other authorities as indicated above. For the purpose, the petitioners may appear before the Chief Secretary to the Government of Rajasthan on 17.12.2012. The petitioners may submit a fresh representation, if so desired, on or before the date of appearance before the Chief Secretary. It shall, obviously, be expected of the Chief Secretary to carry out the requirements of this order and then, to take an objective decision in the matter expeditiously after S.B. CIVIL WRIT PETITION NO. 7227/2012. Gopi Chand & Ors. Vs. State & Ors. // 8 // extending an opportunity of hearing to all the concerned. Until final decision by the Chief Secretary, the proceedings for the work in question shall be kept in abeyance. It is made clear that if the petitioners fail to appear before the Chief Secretary on 17.12.2012 or fail to make their submissions before the Chief Secretary on the given date, the Chief Secretary shall not be obliged to extend them any other opportunity while taking final decision in the matter in accordance with law. No costs. (DINESH MAHESHWARI), J.

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