HIGH COURT OF JAMMU & KASHMIR AND LADAKH AT SRINAGAR

WP (C) No. 963/2020
CM No. 2170/2020.

Reserved On: 28 .03.2024
Pronounced on: 29 .03.2024

Syed Ghulam Mohidin Shah Geelani

…Petitioner (s)

Through: Mr. Syed Avees Geelani, Advocate .

VERSUS

Union Territory of J&K & Ors

…Respondent(s)

Through: Mr. Alla ud din Ganai, AAG with
Ms. Shaila Shameem, Advocate.

CORAM:
HON'BLE MR. JUSTICE RAJESH SEKHRI, JUDGE

JUDGMENT

01. Petitioner has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, for issuance of appropriate writs primarily on the ground that he cannot be deprived of his property and respondents cannot be allowed to forcibly acquire his landed property without adopting due process of law.

02. The petitioner claims to be the recorded owner in possession of land measuring 02 kanals and 16 Marlas covered under Khasra No. 777 situate at village Laderwan of District Kupwara. The allegation of the petitioner is that respondents without following proper procedure as established under law for acquisition are constructing a Panchayat Ghar (Building) over his proprietary land of one kanal out of 2 kanals and 16 marlas of land falling in the aforesaid survey number. It is further case of the petitioner that respondents have started filling the said patch of land by putting mixture of soil, sand and stones thereby destroying the crops and are also cutting down the walnut trees without formal

acquisition/payment of compensation in his favour as provided under Land Acquisition Act,

03. Despite numerous opportunities, respondents failed to file any reply, consequently their right to file the reply was closed by this court on 31.05.2023. However, learned counsel for the respondents has produced relevant record for the perusal of this Court.

04. Heard rival contentions and perused the record.

05. While learned counsel for the petitioner has reiterated the grounds urged in the memo of appeal in his arguments, learned counsel for the respondents, at the outset, have questioned maintainability of the present petition on the ground that petitioner has raised disputed questions of fact, which cannot be gone into by this Court in exercise of writ jurisdiction. Learned counsel for the petitioner has relied upon "***Sukh Dutt Ratra & Anr Vs. State of Himachal Pradesh & Ors" 2022 Live Law (SC) 347***.

06. Hon'ble Supreme Court in "***Sukh Dutt Ratra & Anr Vs. State of Himachal Pradesh & Ors*** (supra) has clearly ruled that nobody can be deprived of liberty or property without due process or authorization of law. Relevant excerpt of the judgement reads as below:-

> **"14. It is the cardinal principle of the rule of law, that nobody can be deprived of liberty or property without due process or authorization of law. The recognition this dates back to the 1700s to the decision of the King's Bench in Entick V. .Carrington 17 and by this Court in Wazir Chand Vs. The State of Himachal Pradesh18. Further, in several judgments, this court has repeatedly held that rather than enjoying a wider bandwidth of lenience, the State often has a higher responsibility in demonstrating that it has acted**

within the confines of legality, and therefore, not tarnished the basic principle of the rule of law"

07. There is no dispute to the trite position of law as held by the Apex Court in ***"Sukh Dutt Ratra"*** (Supra) that right to hold property is the basic human right akin to a fundamental right guaranteed in terms of Article 300-A of the Constitution of India and nobody can be deprived of his right to property, otherwise than in due course of law. However, it is equally well settled that disputed questions of fact cannot be gone into and adjudicated by the High Court, in exercise of Writ jurisdiction.

08. Hon'ble Supreme Court in "**State of Rajasthan vs. Bhawani Singh & Ors."; *1993 Supp(1) SCC 306*,** has held that disputed question relating to title cannot be satisfactorily gone into in a writ petition. Relevant extract of the judgment reads as below:-

"Having heard the counsel for the parties, we are of the opinion, that the writ petition was misconceived insofar as it asked for, in effect, a declaration of writ petitioner's title to the said plot. It is evident from the facts stated hereinabove that the title of the writ petitioner is very much in dispute. Disputed question relating to title cannot be satisfactorily gone into or adjudicated in a writ petition."

09. Hon'ble Supreme Court in **Dr. Karan Singh vs. State of J&K & Anr.; (2004) 5 SCC 698** has made identical observation with respect to jurisdiction of the writ court in relation to disputed questions of fact. Relevant extract of the judgment reads as below:-

"As already noticed, there has never been any declaration that the articles in question are private properties of the appellant or his father. The correspondence between Maharaja Hari Singh and the Government does not

declare these articles as private property of the Maharaja though some other properties were so declared. Assuming there is some substance in the claim of the appellant which requires consideration, then it will depend upon examination of various disputed questions of facts. Such disputed questions cannot be adjudicated except on taking of evidence. In Dharam Dutt v. Union of India a case of taking over of Sapru House by promulgation of ordinance followed by the Act, the contention of the writ petitioners was that the building, the library and all other movables in Sapru House are owned by the Society and takeover by the Government has deprived the Society of its property without any authority of law. This Court noticing that the Union of India do not admit title of the petitioner and also noticing that there is not one document of title produced by the petitioners, held that such highly disputed questions of fact which cannot be determined except on evidence are not fit to be taken up for adjudication in the exercise of writ jurisdiction."

10. Similar observations have been made by Hon'ble Supreme Court in **"Union of India (UOI) and Ors. Vs. Puna Hinda"; AIR 2021 SC 4187 and "Orissa Agro Industries Corporation Ltd. & Ors vs. Bharati Industries and Ors"; AIR 2006 SC 198**

11. The petitioner, in the present case has invoked Writ jurisdiction of this Court on the pre-dominant premise that respondents are constructing a Panchayat Ghar over his proprietary land of one kanal falling under Survey No. 777 situate at Village Laderwan, without following the proper procedure established under law of acquisition. Although, respondents have failed to file objections to the present petition despite numerous opportunities, however, it transpires, on perusal of the record that petitioner approached the office of Block Development Officer, Trehgam, for being engaged as Mali-cum- Chowkidar in lieu of compensation of land and a Communication No. 3167-68 dated 08.03.2004 was addressed by

BDO, Trehgam, to the District Panchayat Officer, Kupwara, that petitioner came to be appointed as Mali-cum-Chowkidar in Panchayat Halqa, Laderwan by the Panchayat Committee in compliance to Govt. Order No. 208 RD of 2003 dated 11.08.2003 as per the recommendation/resolution passed by them on 26.01.2003. These facts have been denied by the petitioner.

12. It further transpires from the record that during mid night of 17th and 18th November, 2018 at about 12:00 am, fire broke out in the Panchayat Ghar, Laderwan and thereafter on 18.11.2018, FIR No. 84 of 2018 under section 436 RPC came to be lodged in police station Trehgam and in this regard the investigation of the case was closed as un-traced on 12.02.2020. Subsequently, an order came to be issued on 06.08.2020, by virtue of which work for construction of the said Panchayat Bhavan at Laderwan on the land measuring 01 kanal was allotted to M/S Heaven Group of Engineers, which land was agreed to be donated by the petitioner and consequently construction was completed up to plinth level and thereafter the petitioner approached this Court for payment of compensation.

13. It appears from the record that respondent department is in possession of 01 kanal of land, stated to be donated by the petitioner on which Panchayat Ghar in question, was constructed by the respondents way back in the year 2002. Since, contention of the petitioner that respondents have acquired the land in question without formal acquisition or payment of compensation is categorically denied by the respondents, therefore, these disputed questions of fact cannot be gone into by this Court in exercise of Writ jurisdiction under Article 226 of the Constitution of India.

14. There may be cases where High Court in exercise of Writ jurisdiction under Article 226 of the Constitution of India, may decide the rival claims of the parties by referring to the contentions and counter contentions raised in the affidavits and counter affidavits and on perusal of the record. However, seriously disputed question of facts or rival claims of the parties, which require investigation and determination on the basis of the evidence to be led by the parties, cannot be gone into and adjudicated upon by the High Court in exercise of its Writ jurisdiction.

15. As already discussed, allegation of the petitioner that respondents are constructing a Panchayat Ghar over his proprietary land without formal acquisition or payment of compensation has been seriously disputed by the respondents, in the record. It is clear from a perusal of the present petition and the record produced by the respondents that there are disputed claims which are required to be interrogated and can be determined by the competent Civil Court only after proper trial and evidence. Such disputed facts cannot be gone into and adjudicated upon by this Court exercising prerogative of issuance of Writs.

16. Having regard to the aforesaid, the present petition being bereft of merit is dismissed. However, petitioner shall be at liberty to avail the appropriate remedy as per the law.

17. Record produced by learned counsel for the respondents is returned in the open Court.

(Rajesh Sekhri)
Judge

SRINAGAR
29.03.2024.
Showkat Khan

Whether the judgement is speaking? ***Yes***

Whether the judgement is reportable? ***Yes***