

CASE NO.:
Appeal (civil) 1022 of 2000

PETITIONER:
H.P. State Electricity Board & Ors.

RESPONDENT:
Shiv K. Sharma & Ors.

DATE OF JUDGMENT: 10/01/2005

BENCH:
Shivaraj V. Patil & B.N. Srikrishna

JUDGMENT:
J U D G M E N T

Srikrishna, J.

The Himachal Pradesh State Electricity Board, Shimla, challenges by this appeal the judgment of the High Court of Himachal Pradesh dismissing its second appeal under Section 100 of the Code of Civil Procedure (hereinafter referred to as 'the CPC').

The appellant-Board purchased 10.10 bighas out of holding of one Rikhi Ram on 20.4.1978. The sale deed specifically mentioned that the present respondents 1 & 3 shall have access to their land from the land of the seller, Rikhi Ram. On 29th March, 1981 the State Government acquired an area of 41.06 bighas of land for the public purpose of construction of 60 KW sub-station at Barotiwalla. The acquired land included the remaining land of Rikhi Ram from whom respondents 1 to 3 had purchased the land. After the acquisition of the land, the entire property acquired for the benefit of the appellant was fenced off by barbed wire. An electric sub-station and living quarters for the employees of the appellant were also constructed thereupon. It appears that the appellant blocked off the passage being used as access to the land of the respondent which passed through the residential quarters and prevented such access to the said respondents. Respondents 1 to 3 filed a suit before the sub-judge Nalagarh for a mandatory injunction ordering the appellant-Board to remove the barbed wire blocking access to their land and for a permanent injunction to restrain the appellant in any manner to obstruct the access to their land. The trial court dismissed the suit.

Respondent 1 to 3 carried an appeal before the Additional District Judge, Solan. The Additional District Judge raised the following points for determination:

"1. Whether the suit of the plaintiffs is liable to be dismissed on account of non-proof of the map filed with the plaint, as held by the learned Trial Court?

2. Whether the plaintiffs have the right by way of easement of necessity or as purchasers from Rikhi Ram to pass through the land of the defendants through the passage shown in the site plan ?

The learned Additional District Judge decided both the points in favour of the said respondents. He also held that the evidence on record proved the existence of a path from the land

purchased by the appellant-Board to the lands of the said respondents and that they had no other approach from Haryana side. In view thereof, the Additional District Judge allowed the appeal and decreed the suit.

The appellant carried a regular second appeal under Section 100 of the CPC before the High Court. The High Court considered the following substantial question of law:

"Whether the right of respondents-plaintiffs to pass through the acquired land for reaching Nalagarh-Barotiwala-Kalka road by way of necessity was encumbrance which stood extinguished ?"

The High Court answered the question of law in favour of respondents 1 to 3 and dismissed the second appeal. Hence, this appeal by special leave.

Both the Additional District Judge and the High Court have concurrently held that the land of respondents 1 to 3 (original plaintiffs) could be approached only through the land of the appellant as the other three sides of the land of the said respondents were surrounded by the territory of Haryana State. There is also a concurrent finding that the sale deed (Ex.PW 1/a) by which the lands were sold by Rikhi Ram to the Appellant-Board contained a clause giving respondents 1 to 3 a right of approach through the land purchased by the appellant; that in the absence of proper evidence led by present appellants (original defendants) by producing the relevant record, adverse inference had to be drawn to hold that fencing was put in the year 1986 as claimed by the plaintiffs; that the trial court was not right in holding that the map (Ex.PW 1/o) was not approved and, therefore, the claim of the respondents-plaintiffs cannot be accepted. The High Court considered the findings of facts recorded by the Additional District Judge and held that these findings did not call for any interference under section 100 of the CPC in the second appeal. Both the Additional District Judge and the High Court have concurrently held that the only approach available to respondents 1 to 3, is through the land of the appellant-defendant and as such they had a right to approach their land as claimed by them and the appellant-defendant had no right to obstruct the said approach by putting up a barbed wire fencing.

It was argued before us, as before the High Court, that by reason of section 16 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'), once an award has been made under section 11 of the Act and possession of the acquired land taken, the land would vest absolutely in the Government "free from all encumbrances". Our attention was also drawn to the definition of "land" in section 3(a) and "person interested" in section 3(b) of the Act.

Reliance was also placed on a judgment of this Court in State of Himachal Pradesh v. Tarsem Singh and Others ((2001) 8 SCC 104) to contend that, even assuming respondents 1 to 3 had a right of way by easement over the land of Rikhi Ram, which was purchased by the appellant, the said land having been acquired under section 16 of the Act stood vested in the State Government absolutely and free from all encumbrances including such easementary right.

The High Court considered several judgments cited before it and drew a distinction between an easement of an ordinary nature in respect of which compensation could have been claimed in the land acquisition proceedings and an easement of necessity like a right of passage and held that right of passage by way of necessity, as enjoyed by the respondents-plaintiffs

over the land of Rikhi Ram and now acquired by the appellant-defendants, was not extinguished by reason of acquisition. The High Court relied on the observations of this Court made in Collector of Bombay v. Nusserwanji Rattanji Mistri and others. (AIR 1955 SC 298), wherein it is observed thus :

"Under Section 16, when the Collector makes an award "he may take possession of the land which shall thereupon vest absolutely in the Government free from all encumbrance". The word "encumbrance" in this section can only mean interests in respect of which a compensation was made under s.11 or could have been claimed."

This judgment of Collector of Bombay (supra) was a judgment by a Bench of three learned Judges of this Court. Learned counsel for the appellants drew our attention to the judgment in State of Himachal Pradesh (supra) rendered by a Bench of two learned Judges and contended that this judgment clearly holds that the phrase "free from encumbrances" used in section 16 of the Act is wholly unqualified and would include in its compass every right including an easementary right which affects the land. He particularly drew our attention to Paragraph 10 of the judgment where the court took the view: "all rights title and interest including easementary rights stood extinguished and all such rights title and interest vested in the State free from all encumbrances."

In the first place, it is difficult for us to read the judgment in Tarsem Singh case (supra) as taking a view contrary to and differing from the law laid down by a larger Bench in Collector of Bombay (supra). Secondly, we notice that the decision in Tarsem Singh (supra) is not in respect of an easementary right arising out of necessity. There does not seem to be any discussion on the said aspect of the matter in this judgment. The view taken in Collector of Bombay (supra), therefore, appears to hold the field, particularly where the nature of easementary right claimed is not capable of being evaluated in terms of compensation and arises out of sheer necessity.

In the peculiar facts and circumstances of the case, therefore, the distinction drawn by the High Court about non-extinguishment of the right of easement arising out of necessity appears to be justified both on principle and precedent. In any event, we do not think that the present is a fit case where it is necessary for us to go deeper into this larger issue of law for we are satisfied that the judgment of the High Court under appeal is not one which is required to be interfered with in exercise of our jurisdiction under Article 136 of the Constitution.

For all these reasons we are of the view that the appeal has no merit and deserves to be dismissed. The appeal is hereby dismissed. No costs.