
(1986) 09 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : Civil Revision No. 115 of 1978

Bishan Dass

APPELLANT

Vs

Land Acquisition Officer, Beas Dam Project, Talwara

RESPONDENT

Date of Decision : 03-09-1986

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : AIR 1987 HP 33 : (1987) ShimLC 16

Hon'ble Judges : T.R. Handa, J

Bench : Single Bench

Advocate : O.P. Sharma, for the Appellant; M.S. Chandel, Asstt. A.G., for the Respondent

Final Decision : Dismissed

Judgement

T.R. Handa, J.—This petition in revision is directed against the order of the Land Acquisition Officer rejecting the application of the petitioner for making a reference to the Court u/s 18 of the Land Acquisition Act, hereinafter called "the Act" on the ground that the petitioner having already received the amount of compensation under the award without protest, was not entitled to claim reference to the Collector.

2. The admitted facts are that the land of the petitioner located in district Kangra was acquired under the provisions of the Act. The award in respect of this acquisition was made by the Collector on 17-7-1973. The petitioner received -the amount of compensation in terms of the award without protest on 10-8-1973. The petitioner also made an application u/s 18 of the Act requiring the Collector to make a reference to the Court for determination of the fair amount of compensation. This application was, however, sent by the petitioner by post. It was actually received by the Collector on 14-8-1973.

3. The case of the petitioner is that he had sent his application u/s 18 of the Act to the Collector by post on 30th July, 1973, that is, before he received the

amount of compensation without protest. Thus, according to the petitioner, he having already lodged his protest with respect to the inadequacy of the amount of compensation by sending his application u/s 18 of the Act to the Collector on 30th July, 1973, his subsequent act of receiving the amount of compensation on 10-8-1973 without protest would not disentitle him to claim reference and the Collector, in the circumstances, was not justified in refusing to forward his application to the Court.

4. It is not disputed on either side that in case the petitioner had already made his application u/s 18 of the Act before the Collector requiring him to make a reference to the Court before he actually received the amount of compensation in terms of the award, the mere fact that he had received such compensation without recording his protest would not disentitle him to make a reference to the court inasmuch as he is deemed to have expressed his protest against the award before receiving the compensation by making the application u/s 18 of the Act.

5. It being an admitted position that the petitioner had received the amount of compensation on 10-8-1973 without protest, he was not entitled to claim a reference to the Court u/s 18 of the Act unless it is shown that he had made his application u/s 18 of the Act to the Collector before the date of receipt of such compensation which, in this case, was admittedly 10th August, 1973. As earlier stated, the application was sent by the petitioner by post and the same was actually received in the office of the Collector on 14-8-1973. The petitioner as stated above claims that he had despatched this application by post on 30th July, 1973, and this is the date that he should be taken for the purposes of section 18 of the Act as the date of making of the application. The counter case of the Collector is that the application was received by him on 14-8-1973 which for all purposes should be taken the date of making this application.

6. The sole question on which the fate of this revision petition depends, is whether the application of the petitioner made u/s 18 of the Act should, in the circumstances as submitted above, be deemed to have been made on 14-8-1973, the date when it was actually received by the Collector or on 30th July, 1973, the date when as per allegations of the petitioner it was actually posted. After giving my due consideration to the relevant provisions of the Act and the arguments advanced on either side, I feel no hesitation in agreeing with the contention raised on behalf of the Collector in this regard. An. application u/s 18 of the Act is required to be made in writing and to the Collector. In the absence of any provision in the Act entitling the petitioner to make such an application by post, the petitioner if he chooses to adopt this mode of making this application, is deemed to have appointed the post office as his agent for the purposes of making the application to the Collector. Any delay on the part of the postal authorities in delivering the application to the Collector would, therefore, be considered as delay on the part of the petitioner himself. It was certainly for the petitioner to ensure that his application made u/s 18 of the Act is received by the Collector within the prescribed period which in the instant case expired when

he actually received the amount of compensation under protest i.e. on 10-8-1973.

7. Even if it be assumed for the sake of arguments that the petitioner could send his application u/s 18 of the Act to the Collector by post, on the facts of this case, there appears to be no justification in accepting the bald version of the petitioner that he had actually posted his application on 30th July, 1973, which is the date mentioned on the application. This application was sent neither by registered post nor under a postal certificate. There is thus no proof of the actual date of its posting. In normal course it should not have taken more than a day or two for this application to reach the Collector from the date of its posting when admittedly the office of the Collector was located quite near the place from where this application is alleged to have been posted. In natural course, the petition, if the same had been posted on 30th July, 1973, must have reached the Collector on or about first August, 1973. The fact that it actually reached the office of the Collector on 14th August, 1973, justifies the presumption that the same was posted after the petitioner received the compensation on 10-8-1973.

8. Thus looking from either angle, the Collector was justified in refusing to forward the application of the petitioner to the Court. This revision petition is accordingly dismissed.