
(1974) 08 SHI CK 0005
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 117 of 1971

Brahma Nand

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 27-08-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227
Land Acquisition Act, 1894 — Section 18, 25, 31, 31(2), 32(2)

Citation : (1974) 3 ILR HP 748

Hon'ble Judges : D.B. Lal, J

Bench : Single Bench

Advocate : R.K. Gupta, for the Appellant; B. Sita Ram, General, for the Respondent

Final Decision : Allowed

Judgement

D.B. Lal, J.—Brahma Nand has filed this writ petition under Articles 226 and 227 of the Constitution, wherein he has called in question the order of the Land Acquisition Collector withholding his application u/s 18 of the Land Acquisition Act for making reference to the Court, and also his subsequent order rejecting his application to that effect. The Petitioner has come to Court with the allegation, that his land comprising in Khasra Nos. 4/1, 5, 5/1 and 92/3/1 was acquired for the construction of Mashobra-Bhekhlti Road and notices under Sections 4 and 6 of the Land Acquisition Act (hereinafter to be referred as the Act) were issued. This land comprised of cultivatory area as well as buildings and compound. The notice u/s 9 of the Act was issued on December 5, 1968. The award was pronounced on August 23, 1969. Thereafter on September 18, 1969, (Annexure D) the Petitioner filed an application u/s 18 for making reference to the Collector. In that application he specifically wrote that the compensation awarded was not acceptable to him and that he had not received the amount which was "inadequate, unreasonable, unjust and arbitrary". He mentioned the compensation to which he was entitled and asked for a reference to be made u/s

18 to the Court for determination of compensation. In addition to all that, it was pleaded that notice u/s 9 was not served upon him in accordance with law. The Petitioner contended that on October 16, 1969, the Revenue staff came to take possession over the property and at that time also the Petitioner protested that the compensation awarded was inadequate and that he had already made a reference u/s 18 which was pending before the Collector. On December 6, 1969, the Land Acquisition Collector sent a notice to the Petitioner that he should appear before him on December 8, 1969, to receive the compensation. On that date he actually received the compensation awarded by the Collector. However, he did not write down on the receipt that he was receiving the payment under protest as to the sufficiency of the amount.

2. Upto the date the Petitioner received the payment, his application u/s 18 of the Act was pending and no orders were passed by the Collector on that application. On May 7, 1970, the impugned order (Annexure A) was passed and the petition was withheld from being sent to the Court. Thereafter on June 19, 1970, the Petitioner showed cause and vehemently protested that his application should be sent to the Court for determination of compensation. This application was rejected on June 19, 1970. The decision was conveyed to the Petitioner under the impugned order (Annexure C) on June 8, 1971.

3. According to Petitioner, the two orders made by the Collector were illegal and without jurisdiction. In view of the pendency of the petition u/s 18 and in view of the subsequent statement of the Petitioner on October 16, 1969, whereby he did not submit to the compensation awarded, there was no necessity for the Petitioner to have written down the words "under protest" while receiving compensation. As such the Collector failed to exercise jurisdiction vested in him and even violated the mandatory provisions of law. The Petitioner had a vested right and the Collector could not but refer the application u/s 18 to the Court and he could not withhold it under law. In this manner the Collector traveled beyond his jurisdiction. He also disregarded a principle of natural justice. According to Petitioner, a manifestly unjust order has been passed and should be set aside.

4. The Petitioner has asked for quashing the two orders made by the Collector and also for a writ of mandamus directing the Collector to refer the matter to the Court u/s 18 for determination of compensation.

5. The Respondents have contested on two main pleas, that a remedy by way of revision was available to the Petitioner and since he has not availed of that remedy the petition is infructuous, and that u/s 32(2)--second proviso, of the Act he has received the amount "otherwise than under protest" and hence he is not entitled to make any application u/s 18. In this manner, according to Respondents, the two orders made by the Collector were correct and cannot be set aside. The Respondents have further pleaded that the notice u/s 9 of the Act was properly issued to the Petitioner and he did not file any claim in pursuance of that notice. The compensation awarded was adequate and cannot be enhanced by the Court u/s 25 of the Act. It was incumbent upon the Petitioner to have

received the amount "under protest" which he never did and hence no reference could be made to the Collector. In fact, he had waived or abandoned that reference which was rightly rejected by the Collector.

6. It is significantly undisputed that the application u/s 18 was moved on September 18, 1969, and was very much pursued by the Petitioner until he received the payment on December 8, 1969. It is also undisputed that on October 16, 1969, the Revenue staff went to take possession and at that time the Petitioner did protest that his application u/s 18 was pending and that he would not give up possession unless adequate compensation was paid to him. It is also undisputed that the Petitioner never wrote the words "under protest" while he actually received the payment. After receiving such payment, the possession was, of course, delivered by the Petitioner.

7. The relevant provisions of the Act would be Sections 18, 25 and 31. u/s 18, all that was required of the Petitioner was, that he was a person interested who had not accepted the award and that he wanted the matter to be referred by the Collector for determination of the Court as to the amount of compensation. Thus the Petitioner having complied with that requirement, got a right from the Collector for reference to be made to the Court u/s 18. Instead of making that reference, the Collector delayed the matter for some reason or the other. In the meantime he offered compensation to the Petitioner and that was received by him. u/s 25 if the Petitioner omitted without sufficient reason to make any claim in compliance of the notice u/s 9, the amount awarded by the Court could not exceed the amount awarded by the Collector. It is manifest, that decision was to be made by the Court and the stage had not arrived till the payment of compensation because no reference was made to the Court u/s 18. Thus in my opinion, Section 25 will not be relevant at this stage. The more important Section is 31(2) which may be extracted as below:

31. (2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application u/s 18:

Provided also that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

8. The Petitioner was obviously entitled for a reference u/s 18, and under the aforesaid second proviso he was to be deprived of that entitlement to make an

application u/s 18 only when he received the amount "otherwise than under protest". The legal right conferred upon the Petitioner u/s 18 could be deprived of only by a provision in the statute. According to the learned Advocate-General, the said provision is contained in Section 31(2). But the second proviso to Sub-section (2) only disentitled him to make an application u/s 18 which "he had already made. That being so, the second proviso, according to its terms, will have no application to the facts of the present case. In that connection, the learned Advocate-General submitted that the Petitioner had waived or abandoned his right to claim a reference u/s 18. To sustain the plea of waiver or abandonment, the conduct of respective parties was required to be looked into. What was then the conduct of the Petitioner? He did not withdraw his application u/s 18 and rather pursued it upto the last. When the Revenue staff came for taking possession, he reiterated his demand for a reference to the Court for determination of adequate compensation. In his reply dated June 19, 1970, which was submitted long after he received payment, he once again reiterated the case for a reference to the Collector u/s 18 of the Act. So long as the conduct of the Petitioner was not utterly inconsistent with the continuing possession of a statutory right conferred upon him u/s 18, it would not be taken to amount to an implied waiver of that right. Before a person can be held to have lost his right by implied waiver, the conduct of such a person must be clearly inconsistent with the retention of such a right by him. The conduct of the Petitioner in the present case is not only consistent with the possession of the right to make a reference u/s 18, but is utterly inconsistent with the theory of waiver by him of such a right. Merely because the Petitioner did not mention in the receipt that he was receiving the amount under protest would be insignificant. For this, I take assistance from two decisions of Tara Chand Vs. The Land Acquisition Collector, (Delhi Shahdara), Delhi, and Amar Singh Vs. Union of India, It must, therefore, be held that the receipt of the amount was subject to the demand for a reference made by the Petitioner. Similarly in Shanta Bai v. Special Deputy Collector, Land Acquisition, Hyderabad AIR 1971 Andhra Pradesh 117, in a very much similar situation it was held that the Land Acquisition Officer was bound to refer the application u/s 18 to the civil Court which he wrongfully withheld. No particular form of indicating protest for the amount of compensation was laid down. Such a protest can only be inferred by necessary implication from circumstances. The very fact that the Petitioner had earlier filed a petition for reference was an indication positive of his protest. It was not further required of him to have written the words "under protest" or to have expressed his positive intention of receiving the amount under protest at the time he actually received the payment.

9. Therefore, in my opinion, the second proviso of Section 31(2) will have no application. The two orders made by the Collector, one withholding the petition u/s 18 and the other rejecting the same having been passed without jurisdiction, must be set aside.

10. It was then contended that there was a violation of a principle of natural justice. But the Petitioner has failed to point out circumstances in what manner

this plea is sustainable. Hence I am not prepared to take notice of any violation of principle of natural justice in this case.

11. In the last, it was contended that another remedy was available to the Petitioner which was a revision prescribed under the Act. Be it as it may, the Collector having failed to exercise a jurisdiction vested in him and his order being manifestly unjust the said order could be set aside by a writ petition under Articles 226 and 227. In *Collector of Customs and Excise, Co-hin and Ors. v. A.S. Bava* AIR 1968 Supreme Court 13, it has been held that the mere existence of a remedy by way of revision did not bar the jurisdiction of the High Court under Article 226. Similar view was expressed by their Lordships of the Supreme Court in 1968 Supreme Court Notes 104 and 107 and it was held that the rule that before a writ is claimed, an aggrieved person should exhaust the statutory remedies is one of his convenience and not a rule of law. In *Brij Gopal Mathur and Another Vs. Kishan Gopal Mathur and Others*, the Court held that the exercise of the jurisdiction u/s 115, Civil Procedure Code, by the High Court is discretionary, meaning thereby that the right to obtain relief under revision is not an absolute right and can be refused even if the conditions laid down in Section 115 of the Code are satisfied. Therefore, the remedy of the revision being a weak remedy could as well be ignored by the Petitioner. In *Smt. Sugandhi widow of Smt. Sugandhi widow of Dammulal and Others Vs. Collector, Raipur and Others, Madhya Pradesh 78*, a Division Bench was considering a case u/s 18 of the Act. The plea set up was that a statutory remedy of revision was provided for the order of the Collector refusing to make reference and since that remedy was not availed of, the writ jurisdiction under Article 226 was barred. It was held that the remedy for a writ under Article 226 was not barred merely because the revision was provided on the principle that the rule that an aggrieved person should exhaust all statutory remedies before he claims interference under Article 226 is not a rigid rule of law but merely a matter of discretion of High Court. Following the ratio of that case I am impelled to hold that the writ under Articles 226 and 227 would nonetheless be granted to the Petitioner and the mere fact that a revision was entertainable would not stand in his way for granting that relief. That apart, even the present proceedings can be converted into a revision and interference in a like manner would be made because the order of the Collector was manifestly unjust and suffered a serious defect as to exercise of jurisdiction by him u/s 18.

12. In view of what I have stated above, the Petitioner was entitled to a reference u/s 18 and a direction can be issued to the Land Acquisition Collector to make that reference now so that the amount of compensation is determined. The petition is allowed with costs, and the two impugned orders are quashed a direction is given to the Respondent No. 2 for making a reference u/s 18 to the Court for determination of compensation.

Counsel fee at Rs. 100.