(2009) 10 SHI CK 0042

In the High Court Of Himachal Pradesh

Chief Engineer, Thein Dam APPELLANT

Vs

Sh. Narain Singh and Others RESPONDENT

Date of Decision : 09-10-2009

Acts Referred:
Land Acquisition Act, 1894 — Section 4

Citation : (2009) 3 ShimLC 123

Hon'ble Judges : Sanjay Karol, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sanjay Karol, J.—The impugned award dated 3.5.2002 passed by the District Judge, Chamba Division, Chamba, H.P. in L.A.C. Petition No. 89 of 2000, titled as Shri Narain Singh v. The Chief Engineer, Thein Dam (Ranjit Sagar) Dam and Ors. has been assailed by the beneficiary of the acquisition proceedings. In the impugned award the amount of compensation, on account of loss of business due to closing down of the Poultry Farm, as assessed by the Collector Land Acquisition, has been enhanced from Rs. 24,000/- to Rs. 1,27,760/-.

2. The amount not being substantial, liberty was granted to the claimant to approach the appellant for an out of court settlement but however the issue could not be resolved amicably.

3. For the public purpose namely Reservoir of Ranjit Sagar Dam (Thein Dam) land situated in mohal Mihnu, Tehsil Dalhousie, District Chamba, H.P. was acquired by the State. Notification dated 9.4.1997 issued u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as the Act) acquiring the land was published in the H.P. Rajpatra on 10.5.1997. The Collector Land Acquisition passed his award dated 26.3.1999 u/s 11 of the Act.

4. Aggrieved of the same the land owners and the claimants filed reference petition u/s 18 of the Act. The claim petition filed by the present respondent was decided in terms of the impugned award.

5. It is not disputed that the claimant/respondent herein was not the owner of the land and compensation with respect thereto already stands paid to the land owners. However, since the claimant was carrying on a business of Poultry Farm on the acquired land, compensation for the same was independently assessed and determined by the Collector. A sum of Rs. 24,000/- alongwith other statutory benefits was directed to be paid to him.

6. The Court below, while deciding the claim petition framed the following issues:

1. Whether the assessment of structure/building of the petitioner has not been properly done? If so, what was the correct market value of the structure/building at the relevant time? OPP

2. Whether the petitioner is entitled to interest as per averments in para 10 (vii) of the application? OPP

3. Whether the petition is within time? OPP

1-A. Whether the compensation for poultry business including its profit has been inadequately assessed as alleged? If so, what is the correct valuation? OPP

4. Relief.

7. The claim petition was held to be within time and issue No. 1-A was decided in favour of the claimant as the amount was enhanced from Rs. 24,000/- to Rs. 1,27,760/-. While adjudicating the claim petition the Collector took into account the statements of the claimant''s witnesses Sh. Narain Singh (PW-1), Sh. Chaman Lal (PW-2) and Sh. Kundan Lal (PW-3).

8. I have heard learned Counsel for the parties and perused the record.

9. The existence of the Poultry Farm and the claimant''s right for determination of the compensation towards loss of business on account of closing down of the Poultry Farm is not in dispute. While enhancing the compensation the Court below took into account the fact that the claimant was having 676 birds which could be slated in five batches, having capacity to earn Rs. 31,940/- per year, and thus awarded the loss for a period of four years.

10. The factual matrix being not in dispute the question which needs to be considered is as to whether the period of loss i.e. four years as determined by the Court below would be appropriate or not. The issue in my view is no longer res integra. It stands settled by not only this Court but also the other Courts of the land.

11. In Union of India Vs. Special Land Acquisition Collector, Amritsar and Others, the claimants were held entitled to compensation for loss of earnings, only for a period of nine months. In yet another decision of the Division Bench of the same High Court, as reported in Smt. Savitri Devi v. State of Haryana through the Land Acquisition Collector, Panchkula, 1894 86 PLR 47, loss of business was determined for the period of only one year. In both these cases the Court was

dealing with the case of a Poultry Farm.

12. In Collector Vs. Hans Raj and Others, and Collector Vs. Smt. Janki Devi, this Court in case of loss of business (caused to a tailor and a businessman) caused on account of acquisition proceedings, determined loss to be only for a period of six months.

13. I am pursuaded by the view taken by the Division Bench of the Punjab and Haryana High Court in Smt. Savitri Devi (supra) as undisputedly one day chicken would become mature and start laying eggs after a period of 150 to 180 days and the owner of the poultry farm would start getting income from the poultry farm business immediately thereafter. About six months period is sufficient for establishing another poultry farm. Thus in my considered view for determining loss of income a period of one year only ought to have been taken into account, instead of four years. One cannot loose sight of the fact that the property of the claimant, birds and building material, was removed by him at the time of acquisition proceedings. In my view the impugned award needs to be modified to the aforesaid extent and the claimant is thus held entitled to compensation of a sum of Rs. 31,940/- instead of Rs. 24,000/-, as determined by the Collector. The claimant shall be entitled to all other benefits already awarded in terms of the impugned award.

14. The appeal is allowed and disposed of with the aforesaid observations.