

(2013) 01 SHI CK 0061

In the High Court Of Himachal Pradesh

Case No : Civil Write Petition No. 7742 of 2011

Dharm Prakesh Bhardwaj

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 11-01-2013

Acts Referred:

Land Acquisition Act, 1894 — Section 31, 31(3A), 4, 6, 7

Citation : (2013) 1 ShimLC 376

Hon'ble Judges : Rajiv Sharma, J

Bench : Single Bench

Advocate : Dinesh Kumar, for the Appellant; Virender Verma, Additional Advocate General and Mr. Neeraj K. Sharma, D.A.G., for the Respondent

Judgement

Rajiv Sharma, J.—Essential facts necessary for adjudication of this writ petition are that a notification, dated 18.12.2000, was issued u/s 4 of the Land Acquisition Act 1894 by the Secretary (Power), Govt. of Himachal Pradesh, which was published in the news papers having wide circulation in the area, namely. The Tribune and Amar Ujala, dated 21.12.2000 for acquiring the land of the petitioner. The same was also published in the Gazette on 23.12.2000. A notification, under Sections 6 and 7 of the Land Acquisition Act was also issued by the Secretary (Power), Government of H.P. on 09.10.2001. It was also published in the Indian Express, dated 22.10.2001, Dainik Tribune, dated 23.10.2001 and in the Gazette notification, dated 11.10.2001. Notices were also served upon the land owners under Section- 9 of the Land Acquisition Act on 25.08.2003. All the necessary codal formalities were completed under the Land Acquisition Act, 1894 and the Land Acquisition Collector, Koldam, Bilaspur, District Bilaspur (H.P.) has passed award No. 37 of 2005 vide Annexure P-1. Since the petitioner was not interested in compensation, he moved an application before the learned District Collector on 21.03.2006 for exchange of land. The same was recommended by the District Collector to the Divisional Commissioner, Shimla Division, Shimla-2 on 26.05.2009. The Divisional Commissioner, Shimla Division, Shimla-2 also recommended the case of the petitioner to the State

Government on 22.06.2009. However, the fact of the matter is that the case of the petitioner was rejected on 19.12.2009.

2. Mr. Dinesh Kumar, learned Counsel for the petitioner has vehemently argued that the case of the petitioner is covered u/s 31(3A) inserted vide Himachal Pradesh Act 17 of 1986 w.e.f. 22.7.1986 for exchange of his land in lieu of his private land acquired for Koldam project. He then contended that the case of the petitioner has been strongly recommended by the District Collector and the Divisional Commissioner and the same has been rejected by the Deputy Secretary (Revenue), Government of Himachal Pradesh without passing a speaking order.

3. Mr. Virender Verma, learned Additional Advocate General has strenuously argued that the petitioner is seeking exchange of land in a separate Mohal. He also contended that it is not mandatory to exchange the land as per Section 31(3A) of the Land Acquisition Act, 1894.

4. I have heard the learned Counsel for the parties and gone through the pleadings carefully.

5. It is admitted case of the parties that the land of the petitioner was acquired and the award was passed by the Land Acquisition Collector, Koldam, Bilaspur, District Bilaspur, H.P. vide Annexure P-1. Petitioner has submitted an application vide Annexure P-2, on 21.03.2006, seeking exchange of land instead of compensation, situated on Khasra No. 819/42, Khata Khatauni No. 290/352 in Mohal Dhalli, Tehsil & Distt. Shimla, measuring 0.01.00 hectares owned by the State Government. Case of the petitioner was recommended by the Deputy Commissioner on 26th May, 2009. The text of letter, dated 26th May, 2009 reads thus:

1. That the private land of the applicant has been acquired for the construction of Koldam Project, Bilaspur by the State Government of H.P. under provisions of the Land Acquisition Act, 1894. It is envisaged u/s 31(3A) of the Act *ibid* that if the person interested in the land is willing to accept the compensation in kind, instead of money, the Collector may, further with the sanction of Government give some other land. So the applicant has requested for exchange of land in lieu of compensation for the land acquired by the Kol Dam Project, Bilaspur.

2. That the other share holders have already received the compensation of the acquired land and as such they are not entitled for land in exchange for their acquired land. However, the applicant has applied for a piece of Government land in exchange in lieu of his private land acquired for the aforesaid purpose, as he has not received the compensation u/s 31(3A) of the land Acquisition Act as amended by the State of H.P.

3. That it is pertinent to mention here that only those applications can be considered in such exchange of the affected persons who had made claim for the land, instead of money/compensation of the acquired land before the Land

Acquisition Officer concerned. Therefore, the approval of the State Government for grant of exchange of Govt. land with that of the acquired is essentially required under the provisions of the Act *ibid*. There is a vacant piece of Government land available in Khasra No. 819/42/1, measuring 0-2 biswas at Chak Badha, Tehsil Shimla. It is also stated that the Govt. has earlier granted land in exchange in such cases vide mutation Nos. 653 dated 14.6.1993, 654 dated 21.9.1993 respectively in the said concerned mauza.

4. That in such cases, there is no ban imposed by the State Government as the case fall within the purview of Section 31(A) of the Act *ibid*.

5. That in this case the Chairman, SADA, Dhalli has already issued the NOC which is placed in the file at page 69/70.

Keeping in view of the above submission the case is recommended for approval of the Government for the grant of exchange of land comprised in Kh. No. 819/42/1, measuring 0-02-08 biswas situated at mauza Tehsil Shimla (Rural), in lieu of private land so acquired by the Government for the purpose stated herein before which may kindly be obtained and conveyed to this office. The original case file containing 108 leaves is enclosed for your kind perusal and necessary action please.

6. The Divisional Commissioner, Shimla Division, Shimla-2 has also recommended the case of the petitioner vide Annexure P-3 on 26.06.2009. The petitioner has also given an affidavit/undertaking stating therein that in case the value of the Govt. land proposed in exchange is found higher side, he was ready to pay/deposit the same as per Annexure P-3. However, despite the recommendations made by the District Collector and Divisional Commissioner, the case of the petitioner has been rejected by the State Government by passing a laconic order on 19.12.2009. There is no reference even to the recommendations made by the District Collector and Divisional Commissioner in the order, dated 19.12.2009. The Deputy Commissioner has given the instances, as quoted hereinabove that the Government has earlier granted land in exchange in such cases vide mutation Nos. 653, dated 14.06.1993 and 654, dated 21.09.1993 in the concerned mauza. Thus, the contention of the respondents that the petitioner cannot be granted land in separate revenue village, is without merit. The other contention of the State Government is that the land which is sought to be exchanged, the value of the same is higher. But, the petitioner is ready and willing to pay/deposit the same and this contention has been noted by the Divisional Commissioner in his letter, dated 26.06.2009.

7. According to the plain language of Sub-section 3A inserted after Section 3 as per Act No. 17 of 1986 w.e.f. 22.07.1986, if a person interested in the land is willing to accept the compensation in kind instead of money, the Collector may further, with the sanction of the appropriate Government instead of awarding a money compensation in respect of any land, give some other land of equivalent value in exchange of the land acquired and thereby pay the compensation

awarded in whole or in part in accordance with the market value of the land so given in exchange. Case of the petitioner is squarely covered under Sub-section 3A of Section 31 of the Land Acquisition Act, 1894, more particularly, when he is ready and willing to accept the compensation in kind instead of money. The petitioner has not accepted the awarded money, though the other co-sharers have accepted the same. Accordingly, in view of the observations and analysis made hereinabove, the writ petition is allowed. The letter, dated 19.12.2009 is quashed and set aside. The respondents are directed to grant the land to the petitioner in exchange situated on Khasra No. 819/42, Khata Khatauni No. 290/352 in Mohal Dhalli, Tehsil and Distt. Shimla, measuring 0.01.00 hectares and in case the value of the land at Dhalli is higher, the petitioner is directed to pay/deposit the same with the State Government, within a period of three months from today. The pending application(s), if any, also stands disposed of. No costs.