
(2014) 08 SHI CK 0078
In the High Court Of Himachal Pradesh
Case No : RFA No. 57 of 2001

Keshav Ram Verma

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 11-08-2014

Acts Referred:

Citation : (2014) 08 SHI CK 0078

Hon'ble Judges : Dharam Chand Chaudhary, J

Bench : Single Bench

Advocate : Bhupender Gupta, Senior Advocate and Janesh Gupta, Advocate for the Appellant; Virender Verma, Addl. A.G., Pushpinder Jaswal, Dy. A.G., Ramakant Sharma and Soma Thakur, Advocate for the Respondent

Final Decision : Allowed

Judgement

Dharam Chand Chaudhary, J.—Aggrieved by the judgment dated 13.12.2000, passed by learned Additional District Judge, Shimla in land reference registered as case No. 169-S/4 of 1993, the appellants (hereinafter referred to as the petitioners) have challenged the same on several grounds, however, mainly that irrespective of the civil litigation with respect to the title of the acquired land pending disposal in the civil Court, the reference petition should have been decided on merits by the Court below and that the liberty reserved to them to approach the Court again with their respective reference petitions for adjudication after the decision of the civil litigation, is hardly of any help to them because with the passage of time, the reference petitions will be barred by limitation.

2. Respondent No. 4 Ramnik Kumar was the owner of acquired land entered in Khasra No. 99/1 measuring 1 biswa, Khasra No. 98 measuring 2 biswansi, 99/2, measuring 4 biswas and Khasra No. 100 measuring 1 biswa total 6 biswas 2 biswansi. He sold the acquired land partly to respondent No. 5 Anand Swaroop and partly to respondent No. 2 Pushpa Behl, as per the entries in the Jamabandi Ex. PW3/A, PW-3/B and PW-3/C. The land was acquired for construction of

Khilini-Bihar road. Petitioner Keshav Ram and his wife Smt. Ram Pyari claimed themselves to be in possession of the acquired land in the capacity of tenant, however not acquired proprietary rights under the provisions of H.P. Tenancy and Land Reforms Act. They, according to them, have acquired the title in the land in question automatically under the provisions of the Act. The petitioners therefore, claim themselves to be the owner-in-possession of the acquired land. The Land Acquisition Collector, however, in the award has held Shiv Narayan @ Sat Narayan and Kewal Krishan entitled to receive the compensation being owners of the acquired land. The petitioners claim the entire awarded amount on account of being in possession of the suit land and having acquired the title therein. They therefore, have filed the reference petitions under Sections 12, 13, 18 and 30 of the H.P. Land Acquisition Act for enhancement of the compensation and apportionment thereof.

3. The respondent-Land Acquisition Collector on finding the dispute of title has submitted in reply to the reference petition that the same is required to be decided by the District Judge u/s 30 of the Land Acquisition Act. The private respondents have denied the title of the petitioners in the acquired land. According to them, their predecessor-in-interest Smt. Chunkhari was non-occupancy tenant over the acquired land and on conferment of proprietary rights, it is they being her daughter and son became owners thereof along with their sister petitioner No. 2 Ram Pyari in equal shares. Therefore, the claim of the petitioners that they being owners of the acquired land are in possession thereof, was denied being wrong.

4. 2nd respondent Pushpa Behl, has also filed a separate reference petition registered as case No. 165-S/4 of 1993 for enhancement of the compensation. Learned Trial Court had clubbed both the reference petitions and decided the same vide common award, which is under challenge in the present appeal.

5. On hearing learned counsel representing the parties in both the petitions and taking note of the admitted position that the dispute qua ownership of the acquired land is still pending adjudication in the Civil Court has concluded as under:-

"10. Therefore, unless the ownership right or the tenancy rights of the petitioners are finally settled by the competent revenue authority, to my mind, the petitioners in both the petitions have no cause of action to prefer the present reference petition. Accordingly, both the issues are answered in the negative.

11. In view of my findings as referred to above, both the petitions fails and stand dismissed. However, it is made clear that in case any of the petitioners in the above referred petitions acquired proprietary rights or tenancy rights finally from the competent authority, they will be at liberty to approach this Court with their respective reference petitions for adjudication of their respective grievances in respect of inadequacy of the compensation and apportionment etc. Memo of costs be prepared accordingly."

6. Learned senior advocate representing the petitioners has urged that the trial Court should have decided the reference petitions on merit instead of disposal thereof by leaving open the right of the parties to file reference petitions afresh for adjudication after the question of acquisition of proprietary rights or tenancy rights finally adjudicated upon by the Civil Court. It has further been urged that a reference made under the Land Acquisition Act has to be decided by the District Judge either this way or that way on merits and cannot be closed in the manner as the trial Court did in the case in hand. Reliance has been placed on the judgment of the apex Court in *Khazan Singh Vs. Union of India*, . The ratio of this judgment reads as follows:

"7. The provisions above subsumed would thus make it clear that the civil court has to pass an award in answer to the reference made by the Collector u/s 18 of the Act. If any party to whom notice has been served by the civil court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the party concerned. But non-participation of any party would not confer jurisdiction on the civil court to dismiss the reference for default."

7. A coordinate Bench of this Court, in *Thakur Dass versus Land Acquisition Collector & Others*, Latest HLJ 2003 (HP), 13 while placing reliance on the judgment of the apex Court in *Khazan Singh's case supra*, has also held that an application made for enhancement of compensation has to be decided on merits. No doubt, in both cases, the respondents despite service failed to put in appearance and it is for that background the apex Court and also learned Single Judge of this Court have observed that whether the party to a reference petition opted to put in appearance is immaterial and so far as the reference petition is concerned the same has to be decided on merits. This Court also feels that the question of enhancement of the compensation, if any, should have been considered on merits and decided by learned trial Court and not left open to be considered and decided after the decision of the civil litigation with regard to the question of the tenancy and conferment of proprietary rights.

8. The decision in such litigation may take considerable time to attain finality. Although the liberty has been reserved to the parties to file reference petition afresh after the decision of the civil Court litigation, yet with the passage of time, legal implications like the question of limitation and also change in the factors to be taken into consideration in a petition u/s 18 of the Land Acquisition Act. It may not be possible to entertain or decide the reference petition so filed afresh more judiciously and effectively.

9. True it is that the question as to which of the party is entitled to receive the compensation is at this stage disputed one. Such question could have been left open to be considered and decided after the decision of civil litigation in favour of the party held entitled to receive the same, on the decision of such question of ownership of the suit land.

10. For all such reasons, the award under challenge is, therefore, not legally sustainable. On the other hand, this Court finds the present a fit case where reference petitions filed by the parties on both sides need to be remanded to learned Additional District Judge, for deciding the question of enhancement of the compensation and leaving open the question of entitlement of all respective parties to receive the compensation on the decision of the civil litigation and the decision so rendered attains finality.

11. This appeal is accordingly allowed. Consequently, the impugned award is quashed and set-aside. Reference petition No. 169-S/4 of 1993 decided vide the award under challenge is remanded to learned Additional District Judge, presently Additional District Judge (I), Shimla for fresh disposal, in accordance with law and in the light of the observations hereinabove.