
(2015) 07 SHI CK 0114

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal Nos. 4107 of 2013, 59, 230 and 263 of 2014

Kundan Lal

APPELLANT

Vs

Land Acquisition Collectors and Others

RESPONDENT

Date of Decision : 03-07-2015

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 20, 4

Citation : (2015) 2 ShimLC 1049

Hon'ble Judges : Dharam Chand Chaudhary, J.

Bench : Single Bench

Advocate : Arvind Sharma, Advocate, for the Appellant; Virender Verma, Additional Advocate General, for the Respondent

Final Decision : Disposed Off

Judgement

Dharam Chand Chaudhary, J.—This judgment shall dispose of the present appeal and also RFA Nos. 59/2014, 230/2014 and 263/2014, involving identical questions of law and facts. The land of the appellants-petitioners has been acquired for the construction of "Koldam" in District Bilaspur. Notification under Section 4 of the Land Acquisition Act was issued on 26.2.2005. On completion of procedural requirements, the 1st respondent assessed the market value of the acquired land and made the award. The appellants-petitioners being dissatisfied with the award preferred references under Section 18 of the Act for enhancement of compensation awarded by the 1st respondent. The references they presented before the 1st respondent on 16.4.2008 were forwarded to the Court of District Judge, Mandi. The same were assigned to learned Additional District Judge, Mandi.

2. On 6.1.2010, the Court below has ordered to issue notice in the reference petitions to the parties in terms of Section 20 of the Act for 6.4.2010. The report made by the Dealing Hand on the margin of Zimni order dated 6.1.2010 is qua service of notice upon respondents No. 1 and 2 only. It appears that the Dealing Hand, taking the references like other matters has issued notice only to the

respondents and omitted to issue notice to the appellant-petitioners. The Ahlmad/ Dealing Hand also seems to have omitted to go through the order dated 6.1.2010 vide which notices were ordered to be issued to the parties. The fact, therefore, remains that on receipt of the reference petitions in the Court below and its registration, notices were never issued or served upon the appellants-petitioners.

3. The record reveals that on the returnable date, i.e. 6.4.2010, Shri Tejeshwai Sharma, Advocate has put in appearance as vice Counsel on behalf of the appellants-petitioners in all these cases. On the next date, i.e. 7.7.2010, Shri O.P. Verma, Advocate has put in appearance as vice Counsel on their behalf. However, on the next date, i.e. 9.11.2010 and the date(s) subsequent thereto, no one had put in appearance on their behalf and the reference petitions were tried in their absence. The same ultimately were dismissed for the reasons recorded on issues No. 1 and 2, which read as follows:

"Issue No. 1.

11. No evidence has been led by the petitioner to prove that inadequate compensation as paid to the petitioner. Hence, this issue is answered in negative and is decided against the petitioner.

Issue No. 2

12. xxxxxxxxxxx xxxxxxx xxxxxxxxx

RELIEF

13. In view of the above, it is held that land Acquisition Collector has properly assessed the market value and no enhancement is required. Hence, the present reference petition is dismissed. The file after completion be consigned to Record Room."

4. The legality and validity of the impugned awards has been challenged on common grounds, mainly that the same having been passed behind the back of the appellants-petitioners, are not legally sustainable.

5. A perusal of the record amply demonstrates that notices to the appellants-petitioners were never issued or served upon them consequent upon the order dated 6.1.2010 passed by learned trial Court. As already pointed out, it seems to have happened due to Ahlmad having omitted to go through the order *ibid*, as the notices have only been issued to respondents No. 1 and 2 and not to the appellants-petitioners. Had the same been issued to the appellants-petitioners also, the copies thereof would have been available on the record of the reference petitions. The factum of notices having not been issued to the appellants-petitioners seems to have escaped the notice of learned trial Judge also. The appellants-petitioners never instructed Shri Tejeshwai Sharma and Shri O.P. Verma, Advocates to appear on their behalf on 6.4.2010 and 7.7.2010. They have filed reference petitions through Shri Arvind Sharma, Advocate. His Power

of Attorney is available on record. Shri Arvind Sharma, who is representing them in this appeal also, has categorically stated that S/Shri Tejeshwai Sharma and O.P. Verma, Advocates were never instructed to appear on behalf of the appellants-petitioners. Therefore, without procuring the presence on behalf of the petitioners, the trial Court should have not proceeded further in the reference petitions. Therefore, proceedings conducted in the reference petitions are vitiated on account of the absence of the appellants-petitioners. Consequently, the awards under challenge in these appeals are not legally sustainable. The same rather deserve to be quashed and set aside and the reference petitions remanded to learned trial Court for fresh disposal in accordance with law. In view of what has been said hereinabove, these appeals succeed and the same are accordingly allowed. Consequently, the awards under challenge are quashed and set aside and the reference petitions remanded to learned trial Court for fresh disposal in accordance with law. The parties through learned Counsel representing them are directed to appear in the Court of learned Additional District Judge (I), Mandi, on 20.7.2015. The records be sent back forthwith so as to reach in the trial Court well before the date fixed.

All the appeals stand disposed of accordingly.