

(1987) 07 SHI CK 0004

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 135 of 1987

Lachhman Dass

APPELLANT

Vs

State of Himachal Pradesh and Another

RESPONDENT

Date of Decision : 15-07-1987

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 31(2)

Citation : AIR 1988 HP 39 : (1988) 1 ShimLC 40

Hon'ble Judges : P.D. Desai, C.J;R.S. Thakur, J

Bench : Division Bench

Advocate : H.K. Bhardwaj, for the Appellant; L.S. Panta, Dy. A.G. and P.A. Sharma, Central Govt. Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

P.D. Desai, C.J.—The land of the petitioner admeasuring 65 Kanals 9 Marlas situate in village Tabba (Jalgran). Tehsil and District Una, was acquired for the purpose of laying the Broad Guage Railway Line from Nangal to Talwara. The acquisition proceedings were initiated by the publication of a notification u/s 4 of the Land Acquisition Act, 1894 (hereinafter referred to as "the Act") on October 20, 1984. Under an award made on May 15, 1986, the Land Acquisition Collector, H.P. P.W.D.. Hamirpur, offered compensation in the sum of Rs. 3,23,972-00 to the petitioner. The payment was made by means of a cheque.

2. The petitioner made an application dated June 18, 1986 (Annexure "A") which was received by the Land Acquisition Collector on June 26, 1986 seeking a reference to the Court u/s 18 of the Act. The application was rejected on January 28, 1987. A communication dated January 29, 1987 (Annexure "B") was sent to the petitioner by the Land Acquisition Collector conveying the rejection on the ground that the application was not maintainable since the petitioner received the compensation without protest. Hence the present writ petition.

3. The original record with respect to the payment of the compensation amount

to the petitioner was ordered to be produced for the perusal of the Court and it has been accordingly produced. A register maintained in Form CC which is known as "The Acquittance Roll" is the material record with respect to the payment of compensation amongst others, to the petitioner. The name of the petitioner appears at Sr. No. 24 in Column No. 2 of the said register. Column No. 4 shows that a sum of Rs. 3,23,972/- was paid to the petitioner. In Column No. 5 the petitioner has appended his signature in Urdu and there is the following endorsement below the signature in English :

"U. P."

On gleaning through the register, it is found that an endorsement in similar terms is made by many other signatories as well. There is no manner of doubt that the endorsement aforesaid indicates that the payment was received by the petitioner "under protest". Even the learned Deputy Advocate General fairly stated that the said endorsement must mean and convey the sense "under protest". Under the circumstances, the rejection of the application of the petitioner on the ground stated in Annexure B must be regarded as having been made under a misconception.

4. The bar against the making of an application u/s 18 of the Act operates against a person who has received the amount otherwise than "under protest" in view of the second proviso to Sub-section (2) of Section 31 of the Act. The said statutory provision is apparently founded on considerations similar to those on which the principles of waiver or estoppel rest. The generally accepted connotation of "waiver" is that to constitute "waiver" there must be an intentional relinquishment of a known right, or the voluntary relinquishment or abandonment of a known existing legal right, or conduct such as warrants an inference of the relinquishment of a known right or privilege. See : *Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another*, The basic requirement of "waiver" is that it must be an intentional act with knowledge. There can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. (See *Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh and Others*, . In order that estoppel, which is a rule of evidence, may operate against a party, it must be shown that (a) a statement of the existence of a fact has been made by him or his authorised agent to another person or someone on his behalf, (b) with the intention that the other person should act upon the faith of the statement, and (c) that other person has acted upon the faith of the statement. See : AIR 1935 79 (Privy Council) .

5. Having regard to the true legal meaning and the generally accepted connotation of the words "waiver" and "estoppel", it is apparent that the person against whom waiver is to be pleaded must be aware of his existing legal right or privilege which, by his words, deed or conduct, he must be shown to have intentionally and voluntarily given up. In order that estoppel may operate against a person, it must be shown that the existence of a fact, or a certain state of

thing, is represented by him or his authorised agent, by words or conduct, to another or to someone on his behalf, with the intention that such other person should act upon the faith of the representation and that the action, in fact, is accordingly taken by such person so as to alter his own previous position.

6. Against the background aforesaid, before the bar placed by the second proviso to Sub-section (2) of Section 31 of the Act can be invoked against any person, it must be shown by acceptable evidence : (i) that he was aware of his right to make an application for reference u/s 18, (ii) that he knew also that such right would be defeated if he accepted the compensation without protest and (iii) that he nevertheless accepted the compensation voluntarily without registering any protest or his words or conduct were such as to tantamount to an intentional representation that he was accepting the compensation without any reservation. In the absence of proof of such facts and/or circumstances, the Court would be loath to place the bar of the second proviso to Sub-section (2) of Section 31 in the way of any claimant.

7. One thing more. While dealing with an illiterate or a rustic person or a person under a disability, it would be legitimate to assume that it is an implied obligation on the part of the Land Acquisition Collector to draw his attention to the provisions embodied in Section 18 and the second proviso to Sub-section (2) of Section 31 of the Act. There is no presumption that every person in this country knows the law; it would be contrary to commonsense and reason if it were so. (See *M/s. Motilal Padampat Sugar Mills Co. Ltd.*) (*supra*). It would be irrational and unrealistic to assume that a rustic or an illiterate villager must be aware of the provisions of Section 18 read with the second proviso to Sub-section (2) of Section 31 of the Act and to infer from his conduct amounting to the acceptance of the compensation without any express protest an intentional relinquishment of his known legal right or a representation deliberately made to the effect that he would not prosecute the further remedy available to him by way of a reference u/s 18 of the Act.

8. The petitioner, in the present case, is a rustic villager. There is no evidence to establish that the Land Acquisition Collector had explained to him the consequences of his acceptance, if any, of the compensation without protest. There is no evidence to establish also that even otherwise he knew the implications of such acceptance and he still accepted the compensation without any protest. From this point of view also the ground on which the rejection order was passed cannot be upheld.

9. For the foregoing reasons, the writ petition succeeds and it is allowed. The first respondent is directed to make a reference to the Court u/s 18 of the Act on the basis of the petitioner's application, Annexure "A", within a period of four weeks from today.

10. Rule is made absolute accordingly with no order as to costs.