

(1982) 08 SHI CK 0001

In the High Court Of Himachal Pradesh

Case No : Civil Writ Petition No. 30 of 1978

Phagan Ram

APPELLANT

Vs

State and Another

RESPONDENT

Date of Decision : 06-08-1982

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (1982) 11 ILR HP 556

Hon'ble Judges : V.D. Misra, C.J

Bench : Single Bench

Advocate : P.N. Nag, for the Appellant; Inder Singh, Advocate General, for the Respondent

Judgement

V.D. Misra, C.J.—The question for decision is whether in the facts and circumstances of this case the Petitioner can be said to have received payment under protest from the Collector.

2. The admitted facts are these. The land of the Petitioner was acquired for the purpose of Bias Dam Project. It was on 28-6-1971 that the award was announced. However, the Petitioner was not present at the time of the announcement of the award. It was on 28-7-1971 that the Petitioner filed an application u/s 18 of the Land Acquisition Act claiming a reference for determining the amount of compensation. Later on, the Petitioner received the compensation awarded to him by the Collector on 12-8-1971. The Collector refused to make the reference on the ground that the Petitioner had accepted the compensation without protest.

3. It is true that while accepting the compensation the Petitioner did not write that he was accepting the same under protest. However, the facts speak for themselves. The Petitioner's protest is evident from the fact that he had, before receiving the compensation, asked for reference u/s 18 for determination of the amount of compensation as he objected to the compensation awarded by the Collector. Having raised the objection before receiving the compensation, it was

not necessary for the Petitioner to repeat his protest again at the time he received the compensation.

4. My attention has been drawn to a judgment of Delhi High Court in Tara Chand Vs. The Land Acquisition Collector, (Delhi Shahdara), Delhi, In that case the claimant had accepted the compensation without protest. But soon thereafter he made an application u/s 18 asking for a reference to the court, for determination of the amount of compensation. It was held that in these circumstances it cannot be said that the claimant had waived his right to ask for a reference either expressly or impliedly. In the instant case, as already stated, the Petitioner having objected to the compensation awarded by the Collector by asking for a reference u/s 18, it is obvious that he was accepting the compensation later on under protest.

5. The writ petition is, therefore, accepted with costs and the Land Acquisition Officer, Respondent No. 2, is directed to make the reference to the court in terms of Section 18 of the Land Acquisition Act.