
(2016) 09 SHI CK 0047
In the High Court Of Himachal Pradesh
Case No : RFA No. 357 of 2015

Shri Yogeshwar Singh

APPELLANT

Vs

State of H.P.

RESPONDENT

Date of Decision : 09-09-2016

Acts Referred:

Citation : (2016) LatestHLJ(HP) 1385

Hon'ble Judges : Mr. Rajiv Sharma, J.

Bench : Single Bench

Advocate : Mr. Neeraj K. Sharma, Deputy Advocate General, for the Respondent/ State; Mr. G.C. Gupta, Senior Advocate with Ms. Meera Devi, Advocate, for the Appellants in RFA No. 357 of 2015; Mr. Suneet Goel, Vice Counsel, for the Respondents No. 2 and 3 in RFA No. 35

Final Decision : Allowed

Judgement

Rajiv Sharma, J. - Since both the appeals arise out of same subject matter, between same parties, they were taken up together and being disposed of vide this common judgment to avoid repetition of evidence.

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2. This Regular First Appeal is directed against Orders dated 4.7.2015 and 7.7.2015 rendered by the learned District Judge, Sirmaur District at Nahan, in applications No. 01-LAC/4 of 2013 and No. 498-CM/6 of 2015, and Award dated 7.7.2015 in LAC Petition No. 01-LAC/4 of 2013.

3. "Key facts" necessary for the adjudication of the present appeal are that the appellants are owners-in-possession of the land comprised in Khata Khatauni No. 79/107, Khasra No. 591/480, measuring 46-14 Bigha, situate at Mauza Deed Bagar, Sub-Tehsil Dadahu, District Sirmaur, HP to the extent of 3rd share each as per Jamabandi for the year 2008. Land of the appellants was acquired by the respondents for the construction of Renuka Ji dam. Notification under Section 4 of the Land Acquisition Act (herein after referred to as "Act") was issued on

18.11.2008, which was published in two daily newspaper i.e. Dainik Jagran and Times of India and in Rajpatra on 19.11.2008. Notifications under Sections 6 and 7 of the Act were issued on 3.11.2009 and published in newspapers i.e. Punjab Kesari on 16.11.2009, in Indian Express on 11.11.2009, and in Rajpatra on 7.11.2009. Inquiry under Section 8 of the Land Acquisition Act was conducted. Notice was issued to the interested persons under Section 9 of the Act was passed. Appellants filed objections to the Notification under Section 9 of the Act and quoted the market price to which they were entitled. Objections raised by the appellants were duly controverted by the respondents by filing reply. Award No. 653 was passed by respondent No. 3 on 6.8.2012. Appellants, feeling aggrieved and dissatisfied with the Award dated 6.8.2012 bearing No. 653, filed an application before respondent No. 3 to refer the matter to the District Judge, under Section 18 of the Act. Accordingly, respondent No. 3 referred the matter to the learned District Judge. District Judge issued notice to the parties. Learned District Judge framed issues on 18.10.2013. Appellants filed an application for amendment of petition. Matter came up before the District Judge on 18.6.2015. Matter was listed for 4.7.2015 for recording the evidence of the appellants. Appellants were directed to produce the evidence on their own responsibility. On 24.6.2015, counsel of the appellants had gone to the District Court at Nahan for appearing in a case titled Joginder v. State of H.P. and others. Counsel of the appellants in the Court below requested for early hearing of the matter. However, the registry of the Court apprised the counsel that the Presiding Officer would be on leave from 29.6.2015 to 4.7.2015. Next date of hearing was fixed on 7.7.2015. However, case was taken up on 4.7.2015, on which date neither the counsel nor the appellants appeared. Since the reference could not be dismissed in default, the learned District Judge after closing the evidence of the appellant and taking sale deed filed on behalf of respondents No. 2 and 3 on record heard the arguments and reserved the judgment. Counsel for the appellants filed an application under Section 151 CPC stating the reasons for his absence on 4.7.2015. In the application, he has assigned reasons for non-appearance on 4.7.2015. It was also averred in the application that a huge chunk of land was involved and if the appellants were not granted opportunity to lead evidence, the whole claim of the appellants would fail and they would suffer huge financial losses and loss of property. However, fact of the matter is that learned District Judge decided the reference petition No. 01-LAC/4 of 2015 on 7.7.2015 without even relying upon his own judgment and granted compensation @ Rs. 1.00 Lakh per bigha, ignoring the judgment passed in LAC Petition No. 10- LAC/4 of 2012 in which compensation with respect to the land acquired in the adjoining village for the same purpose and vide same notification, was awarded at the rate of Rs. 5.00 Lakh per Bigha.

4. Application was filed on 6.7.2015 for providing opportunity to the appellants to lead evidence. It was rejected by the learned District Judge on 7.7.2015 by making the observation that, "The application is dismissed as per order passed in the main case file. It be tagged with main case file after registration."

5. Notification under Section 4 of the Act was issued for acquiring the land of the appellants on 18.11.2008. Thereafter, notification under Sections 6 and 7 of the Act were issued. Appellants filed their objections to the notification under Section 9 of the Act. Objections were duly controverted by the respondents by filing reply. Award was made by the learned Collector on 6.8.2012. Reference was made to the learned District Judge. It is evident from the pleadings that the learned counsel for the appellants appeared in case Joginder v. State of Himachal Pradesh and others. He was apprised by the Registry of the Court that the Presiding Officer would be on leave from 29.6.2015 to 4.7.2015. The Presiding Officer has not proceeded on leave. Matter was taken up on 4.7.2015. Learned District Judge, on 4.7.2015 has made observations that since petition could not be dismissed in default, same was to be disposed of on merits. Evidence of the appellants was closed. Learned District Judge has taken on record, Ext. RA produced by respondents No. 2 and 3. Matter was ordered to be posted on 7.7.2015. Learned District Judge made Award on 7.7.2015 without affording any opportunity to the appellants to lead their evidence. Application preferred by the appellants for permitting them to lead the evidence in the case was also dismissed as discussed herein above on 7.7.2015 by passing a very cryptic order. District Judge has adopted a very hyper-technical approach while closing the evidence of the appellant on 4.7.2015. Thereafter he dismissed the application on 7.7.2015 denying the opportunity to the appellants to lead evidence and also passed Award dated 7.7.2015. Learned District Judge should not have abruptly closed the evidence of the appellants when they were asked to produce their evidence on their own responsibility. Learned counsel has not appeared on 4.7.2015 under the impression that since the Presiding Officer was on leave, matter would be adjourned to other date. Learned counsel in the Court below has filed his personal affidavit and has assigned reasons why he could not appear on 4.7.2015. Huge chunk of land is involved in the case and appellants would be deprived of their right to get just and fair compensation only for the reason that their evidence was ordered to be abruptly closed by passing a non-speaking order on 4.7.2015. Matter was fixed for 18.6.2015 and thereafter on 4.7.2015. Appellants have been deprived of their valuable right to lead evidence. More particularly, record regarding the application of the Presiding Officer for sanction of leave during the week in which case was fixed for the evidence of the appellants, was obtained under Right to Information Act vide annexure A-3. However, same has also been overlooked by the learned District Judge while making Award on 7.7.2015, consequently prejudicing the rights of the appellants. "

6. In view of the discussion and analysis made herein above, the present appeal is allowed. Orders dated 4.7.2015 and 7.7.2015 passed in 01-LAC/4 of 2013 and No. 498- CM/6 of 2015, in LAC Petition No. 01-LAC/4 of 2013 by the learned District Judge, Sirmaur at Nahan, as well as Award dated 7.7.2015 are set aside. Matter is remanded back to the learned District Judge, Sirmaur at Nahan to permit the appellants to lead their evidence. Learned District Judge shall

conclude the trial within a period of six months from the date of receipt of the record. Pending applications in the appeal are also disposed of. Parties through their counsel are directed to appear before the District Judge, Sirmaur at Nahan on 19.9.2016.

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7. In view of the observations made above, the present appeal has become infructuous. Dismissed as such, along with pending applications.