
(1962) 04 SHI CK 0002
In the High Court Of Himachal Pradesh
Case No : Civil Writ Petition No. 3 of 1961

Smt. Sampuran Kaur and Another

APPELLANT

Vs

Collector, Land Acquisition and Others

RESPONDENT

Date of Decision : 06-04-1962

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Land Acquisition Act, 1894 — Section 18, 18(1), 25, 25(2), 25(3)

Citation : AIR 1963 HP 1

Hon'ble Judges : C.B. Capoor, J.C.

Bench : Single Bench

Advocate : Prithvi Raj, for the Appellant; K.C. Pandit, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

C.B. Capoor, J.C.

1. This is a petition under Articles 226 and 237 of the Constitution of India. The petitioners were the owners of land and buildings comprised in Khewat Khatauni No. 317 and 317/A Khasra Nos. 1766, 2090/1802, 1819, 1820, 1821, 1823, 2101/1798, 1814, 18.17 and 1818 measuring 6 bighas 12 biswas situate in village Bair-ki-Ser Pargana Sumna Basal, Tehsil Solan, District Ma-hasu- A notification was issued acquiring tile aforesaid lajid for industrial estate a public purpose. By the aforesaid notification the Collector Mahasu was empowered to hear the objections of the interested persons. The award was, however, made by the Magistrate first class Solan exercising the powers of Land Acquisition Collector on 26-2-1960. On 6-7-1960 the petitioners submitted a petition to the aforesaid Land Acquisition Collector for making a reference to the Court as the award was not acceptable to them. This petition was rejected on the ground that a claim petition was not filed within 15 days of the issue of notice u/s 9 of the Land Acquisition Act, hereinafter to be referred as "the Act". The gravamen of the petitioners is that the learned Magistrate first class Solan was not duly

empowered to exercise the powers of the Collector under the Act and that he was in error in rejecting the petition for reference. The petitioners' contention is that the petition for reference was made within the prescribed period of limitation and that in any case it was incumbent upon the Land Acquisition Collector to forward it to the Court. The petitioner have also attack ed the validity of the notice issued u/s 9 and of the notification issued u/s 17 of the Act but it is not necessary to detail the grounds of attack as, the petition was admitted with a view to examine the legality of the order dated 6-7-1960, only.

2. The respondents to the petition are the Collector Land Acquisition "Solan, Himachal Pradesh Administration through Collector Mahasu and the Union of India. It has, however, been stated by the learned counsel for the petitioners that no relief is desired by them against the respondents, Nos. 2 and 3.

3. The main grounds on which the petition has been opposed are firstly that it is not maintainable as an alternate remedy is available to the petitioners and they have not availed of the same, secondly that the Magistrate first class Solan had been duly notified as the Land Acquisition Collector for acquiring inter alia the aforesaid land and thirdly that the petitioners did not prefer their claim in response to the notice u/s 9 of the Act within the time prescribed and the Land Acquisition Collector was perfectly justified in rejecting the petition for reference and in not making a reference to the Court.

4. The following questions arise for determination :

1. Whether a petition under Articles 226 and 227 of the Constitution is maintainable?.

2. Whether the Magistrate first class Solan has been duly notified as Land Acquisition Collector?

3. Whether the order dated 6-7-1960 was in accordance with law or whether the respondent No. 1 was bound to refer the case to the Court on the submission of the petition for reference by the petitioners?

5. QUESTION NO. 1 : The plea raised on behalf of respondent no. 1 was that the petition was not maintainable as the remedy of the petitioners lay by a regular civil suit. At the time of argument the learned counsel shifted his ground to a certain extent and urged that the petitioners could have filed an application in revision against the impugned order and as they did not avail of that remedy the present petition did not lie. In support of the aforesaid contention he relied upon a ruling of the Allahabad High Court reported in Bhajani Lal and Others Vs. Secy. of State but that ruling far from supporting his contention negatives it. It has been held therein that no revision lies against an order of the Land Acquisition Officer refusing to make a reference to the Court. When the learned counsel was confronted with the aforesaid position he urged that there was a difference of opinion amongst the various High Courts on the question as to whether an application in revision lay against an order of the Land Acquisition Collector

declining to make a reference to the Court. It does appear that there is a conflict of judicial authority on the aforesaid question but for the purposes of this case it is not necessary to express any opinion as to which of the conflicting views is sound. Even if it be assumed that an application in revision lies against an Order of the Land Acquisition Collector rejecting a petition for reference made by a claimant the application would lie in the High Court! and the jurisdiction exercised by a High Court under Articles 226 and 227 of the Constitution is more or less akin to the jurisdiction exercised by it on the revisional side and the existence of the power of revision cannot be said to be a bar to the exercise of powers under Articles 226 and 227 of the Constitution of India. I, therefore, hold, that the petition is maintainable.

6. QUESTION NO. 2 : According to Section 3 (c) the expression "Collector" means the Collector of a district, includes a Deputy Commissioner and any officer specially appointed by the appropriate Government to perform the functions of a Collector under this Act. Magistrate first class Solans has been duly appointed by the appropriate Government to perform the functions of a Collector under the Act and it could not, therefore, be said that the impugned order was made by an officer not competent to exercise power under the Act.

7. QUESTION NO. 3 : This is the most important question arising in the case and hinges on the correct interpretation of Sections 18, 25 and 31 of the Act. Sections 18, 25 and the relevant portion of Section 31 run as below :

"18. (1) Any person interested who has not accepted the award may, by written applications to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken : Provided that every such application shall be made-

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within % weeks of the receipt of the notice from the Collector u/s 12, Sub-section (2), or within six months from the date of the Collector's award whichever period shall first, expire."

"25. (1) When the applicant has made a claim to compensation pursuant to any notice given u/s 9, the amount awarded to him by the Court shall not exceed the amount so claimed Or be less than the amount awarded by the Collector u/s 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector."

"31. (1) On making an award u/s 11, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference u/s 18 would be Submitted :

Provided that any person admitted to be interested may receive such payment under the protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application, u/s 18: Provided also that nothing herein contained shall affect the Liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto."

8. It will have been noticed that u/s 18 it is incumbent upon the Collector to make a reference to the Court if a petition has been made by a person interested requesting the Collector to make a reference and if such petition is made within the prescribed period of limitation and is not barred under the second proviso to Section 31 of the Act in the instant case the Land Acquisition Collector did not decline to make a reference to the Court On the ground that the petition for reference was filed after the expiry of the prescribed period of limitation or that the amount of compensation tendered by him has been accepted by the petitioners without protest. The award of the Collector was made OP,- 26-2-1960 and it appears not only from the impugned order but also from the written-statement filed on behalf of respondent No. 1 that the petition for reference was made on 6-4-1960. The petition for reference was thus well within time. The Land Acquisition Collector declined to make a reference on the ground that the petitioners did not prefer their claim within 15 days of the issue of the notice u/s. 9 of the Act. On behalf of the petitioners it has been contended that the notice u/s 9 was served upon them on 3-2-1960 and they had submitted their claim within 15 days of that date and as such the Land Acquisition Collector was in error in holding that the claim was submitted after the expiry of the prescribed period of time. I do not propose to go into the question as to whether the claim submitted by the petitioners was filed within time or not for even if it be held to have been filed beyond time the Land Acquisition Collector could not withhold the petition for reference on that score. A perusal of Sub-sections (2) and (3) of Section 25 will leave no room for doubt that the question as to whether there

was Sufficient cause for the non-submission of claim within time is for the Court and not for the Land Acquisition Collector to decide. If the Court comes to the conclusion that the omission to prefer claim is backed by a sufficient cause it has the power to enhance the amount of compensation awarded by the Collector but if its conclusion be otherwise it cannot award compensation in excess of the amount awarded by the Collector. In the case of Jagarnath Lall Vs. Land Acquisition Deputy Collector, it was held by a Special Bench of three Judges that the wording of Section 18 (.1) leaves the Collector no alternative but to refer the matter if the application is made within the periods prescribed by the section and is not barred by proviso two to Section 31 of the Act. The Land Acquisition Collector therefore exceeded his powers in declining to make a reference to the Court when he was moved by the petitioners in that behalf. The question is answered in favour of the petitioners.

9. In conclusion, the petition is accepted with costs and a writ in the nature of certiorari is issued quashing the order dated 6-7-1960 and a writ of mandamus is issued directing respondent No. 1 to make a reference to the Court in accordance with the relevant provisions of the Act.