

(2011) 03 SHI CK 0038

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 95 of 2004

Smt. Savitri Devi

APPELLANT

Vs

State Of Himachal Pradesh

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Himachal Pradesh Amendment Act, 1986 — Section 5
Land Acquisition (Amendment) Act, 1984 — Section 11
Land Acquisition (Himachal Pradesh Amendment) Act, 1964 — Section 2(A), 2(B), 4, 6, 9
Land Acquisition Act, 1894 — Section 11, 18, 18(1), 18(2), 18(2A)

Citation : (2011) 2 ShimLC 219

Hon'ble Judges : Surinder Singh, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Hon"ble Surinder Singh, J.—The instant appeal has been filed by the claimant/ appellant, feeling aggrieved and dissatisfied by the judgment/ award passed by the learned Additional District Judge (II), Kangra at Dharamshala, disallowing the enhancement over and above the value of the land assessed by the Land Acquisition Collector, Kangra, vide his Award No. 15 of 1997 and allowing the Reference Petition of the State u/s 18(2) of the Land Acquisition Act, 1894 in short "the Act" whereby the learned Reference Court modified the Award of the Land Acquisition Collector, to the extent that the claimant is only entitled for the interest from the date of notification and not from the date of possession.

2. The facts in brief are that the State Government had acquired the land comprised in Khata No. 2 min. Khatauni No. 34, Khasra Nos. 14 and 16 to 20, total 6 plots, (wrongly mentioned 7 plots), measuring 0-55-61 HM, situated in Tikka Baldoon, Mauja Gahin Lagora, Tehsil Nurpur, District Kangra, H.P., for the construction of water supply scheme. The State Government through the Land Acquisition Collector, Kangra issued the Notification u/s 4 of the Act on 1.4.1995,

expressing its intention to acquire the land followed by Notifications under Sections 6 and 9 of the Act.

3. After hearing the parties, the Award No. 15 EX.PW2/T, was announced by the Land Acquisition Collector on 10.7.1997, based upon the classification of land, which also included the interest from the date of possession of the land. Since the amount of compensation was more than Rs. 5 lacs, as such, it was sent for the approval of the Government u/s 11 of the Act. The Award was approved on 7.5.1997 and thereafter it was announced.

4. The State felt aggrieved by the impugned award as such, filed an application in the Reference Court u/s 18(2A) of the Act, inter-alia disputing the interest from the date of possession as well as the valuation of the land.

5. It is clarified that the claimant did not file any reference petition but in reply to the reference filed by the State questioned the maintainability of their Reference petition and averred that they were awarded less amount than the prevalent rate. The Reference Court framed the Issue No. 1 "whether award is illegal and bad" and No. 2 on the "question of maintainability", both were decided against the claimant. Thus, the award was modified to the extent that the rate of interest was awarded from the date of Notification i.e. 25.11.1995 but the market value was not charged.

6. Feeling aggrieved and dissatisfied by the impugned Award passed by the Reference Court, the present appeal has been preferred by the claimant and in CMP No. 397 of 2004, took the additional ground of maintainability, which was allowed to be agitated being, purely legal in character.

7. Shri G.C. Gupta, learned Senior Advocate, duly assisted by Shri Balwant Kukreja, learned Advocate, only confined himself only to the question of maintainability and not on valuation of the land and rightly so because claimant had not preferred any reference petition u/s 18 of the Act. The learned counsel argued that there was no provision in the Act whereby the State could have filed a reference petition. To support his argument, he led me through the various State amendments of the Act and also ventilated that when the Award passed by the Land Acquisition Collector was accepted by the State Government as per Section 11 of the Act, then it has no locus-standi to agitate it before any Forum with respect to any matter decided by the Land Acquisition Collector.

8. Contra, Shri A.K. Bansal, learned Additional Advocate General submitted that the Land Acquisition Collector had awarded the interest from the date of possession to the claimant, which is not interceded in law. Hence, petition was competent.

9. I have given my thoughtful consideration to the rival contentions of the parties and have carefully gone through the relevant provisions.

10. In the year 1964, the State of Himachal Pradesh brought Land Acquisition (Himachal Pradesh Amendment) Act, 1964 (Act No. IX of 1964), whereby vide

Section 4, two Sections i.e. sub Sections (2-A) and (2-B) were added to the main Section 18 of the Land Acquisition Act, in the State of Himachal Pradesh, which reads as under:

4. Amendment of Section 18.--In Section 18 of the principal Act, after sub-section (2), the following sub-sections shall be inserted, namely:--(2-A) Without prejudice to the provisions of sub-section (1), the State Government may, where the acquisition of land is not for the purposes of the Union and it considers the amount of compensation allowed by the award u/s 11 to be excessive, require the Collector by written application that the matter be referred by him to the Court for determination of the amount of compensation.

Explanation.--In any case of land under Part VII, the requisition under this sub-section may be made by the State Government at the request of the Company on its undertaking to pay all the cost consequent upon such requisition.

(2-B) The requisition shall state the grounds on which objection to the award is taken and shall be made within six months of the date of award.

11. Subsequently, sub-section (3) was added to Section 18 of the Land Acquisition Act by the State Amendment Land Acquisition (Himachal Pradesh Amendment) Act, 1979 (Act No. 4 of 1980) and it reads as under:

(3) Any order made by the Collector on an application under this Section shall be subject to revision by the High Court, as if the Collector were a Court subordinate to the High Court within the meaning of Section 115 of the Code of Civil Procedure, 1908 (5 of 1908).

12. Vide Section 9 of the same amending Act, besides other Acts, the Land Acquisition (Himachal Pradesh Amendment) Act 1964 (9 of 1964) as in force in the areas comprising in Himachal Pradesh immediately before the 1st November, 1966 was repealed, which shows that after coming into in force the Land Acquisition (Himachal Pradesh Amendment Act, 1979) aforesaid sub-section (2-A) and (2-B), which were added by way of 1964 State Amendment stood repealed and was no longer in existence, rather sub-section (3) of Section 18 was added. Thereafter, inter-alia, a proviso was added to Section 11 of the Land Acquisition (Amendment) Act (Central Act No. 68 of 1984), which reads as under:

Provided that no award shall be passed by the Collector under this sub-section without the previous approval of the appropriate Government or of such Officer as the appropriate Government may authorise in this behalf:

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

13. In the instant case, the Award Ex.PW2/T reveals that since the Award was of more than Rs. 5 lacs, therefore, it was sent for the approval of the Government, as required under the amended proviso stated above.

14. Further in the year 1986, the State Legislature introduced another amendment i.e. The Land Acquisition (Himachal Pradesh Amendment) Bill 1986 in the State Assembly with statement of objects and reasons, that the Land Acquisition (Amendment) Act 1984 (Central Act No. 68 of 1984) had come into force w.e.f. 24th September, 1984 seeking to introduce far reaching changes in the principal Act i.e. the Land Acquisition Act, 1894, as previously the principal Act was amended in its application to the State of Himachal Pradesh by Land Acquisition (Himachal Pradesh Amendment) Act, 1979 (Act No. 4 of 1980). Consequent upon the Central amendments some of the State amendments became redundant. Hence it became necessary to recast the provisions made in the Himachal Pradesh Act No.4 of 1980 supra. This apart, in *Tulsi Ram v. State of Himachal Pradesh*, our own High Court in its judgment dated 31.5.1984 recommended to consider the desirability of empowering the Collector, Land Acquisition to entertain even after the expiry of the period of limitation u/s 18 of the principal Act, the applications, for making references by condoning the delay for sufficient reasons, which necessitated amendments in the Land Acquisition Act, 1894, in its application to the State.

15. The Bill aforesaid was passed with certain amendments and it became Land Acquisition (Himachal Pradesh Amendment) Act, 1986 (Act No. 17 of 1986) and Section 5 of the said amended Land Acquisition (Himachal Pradesh Amendment) Act, 1979 was repealed as provided therein.

16. Thus, from the above position, it is manifest that the power of making the reference given to the State Government by virtue of sub-section (2-A) and (2-B) of 1964 Act, referred above stated to have been withdrawn and was repealed by 1979 Amendment. Therefore, the reference preferred by the State through the Secretary, Irrigation and Public Health against the award passed by the Land Acquisition Collector is not competent and is also without jurisdiction. Thus, learned Reference Court committed an error while deciding issue No. 2 holding that the reference filed by the State was maintainable.

17. No Other points urged or pressed.

18. For the foregoing reasons, the appeal filed by the claimant is allowed and the award/order dated 14.1.2004 passed in Reference Case No. 1 of 1998 by the learned Additional District Judge modifying the Award No. 15 dated 10.7.1997 passed by the Land Acquisition Collector is set aside.

19. Parties are left to bear their own costs.