

(1995) 07 SHI CK 0010

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 41 of 1991 and Cross Objection No. 307 of 1992

State of Himachal Pradesh and Others

APPELLANT

Vs

Ramji Dass Chauhan

RESPONDENT

Date of Decision : 11-07-1995

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 23(1), 23(1A), 23(2)

Citation : (1995) 3 ILR HP 1659

Hon'ble Judges : S.N. Phukan, C.J.;A.L. Vaidya, J

Bench : Division Bench

Advocate : Indar Singh, General, for the Appellant; G.D. Verma, for the Respondent

Judgement

S.N. Phukan, C.J.—By this common judgment, we propose to dispose of Regular First Appeal No. 41 of 1991 along with Cross Objections No. 307 of 1992 and Regular First Appeal No. 187 of 1992 along with Cross Objections No. 137 of 1993. R.F.A. No. 41 of 1991 along with the Cross Objections have been filed by the State against the award of the Additional District Judge (I), Shimla in a reference petition filed u/s 18 of the Land Acquisition Act, 1894 (hereinafter as "the Act") registered as 32-S/4 of 1987 and the award is dated 4th January 1991. Similarly, R.F.A.No.187 of 1992 along with Cross Objections have been filed against the award u/s 18 of the Act passed by the District Judge (Forests), Shimla on 19th December 1991 in Land Reference No. 28-S/4 of 1989. It may be stated here that in the impugned award, the Land Acquisition Judge assessed the value of the land on the basis of the award in Land Reference No. 32-S/4 of 1987 against which R.F.A. No. 41 of 1991 has been filed. Accordingly, the decision in R.F.A.No.41 of 1991 will also cover R.F.A. No.187 of 1992.

2. In R.F.A. No. 41 of 1991, the notification u/s 4 of the Act was issued on 18th June 1983 and the award was announced on 30th December 1985. The area of the land acquired was 6 bighas and 4 biswas and it was for a public purpose,

namely, construction of Samoli-Bholar Road. In R.F.A. No. 187 of 1992, notification u/s 4 of the Act was published on 23rd February 1985 and the award was announced on 24th August 1987. The area of the land was 1 bigha 12 biswas and it was for construction of Samoli Pul to Parsa Kyara Lower-koti Road.

3. In the impugned award in R.F.A. No. 41 of 1991, the Land Acquisition Judge fixed the market value of the land at Rs. 4,000/per biswa and interest at the rate of 12% per annum w.e.f. 18th June 1983, i.e. the date of notification u/s 4 of the Act to 30th December 1985, i.e. the date of the award by the Land Acquisition Collector. In addition, 30% solatium was awarded. Further interest at the rate of 9% per annum on the enhanced amount of compensation was allowed for a period of one year commencing from 30th December 1985, i.e. the date of the award by the Land Acquisition Collector. Thereafter, the interest was increased to 15% per annum till the date of payment of the enhanced amount. Relying on this award, in the impugned award in R.F.A. No. 187 of 1992, the value of the land was assessed at Rs. 1,000/- per biswa considering the distance of the acquired land from the land in the earlier award. In addition, solatium at the rate of 30% on the compensation was also granted and interest at the rate of 12% per annum under Sub-section (1-A) of Section 23 of the Act was also granted w.e.f. 25th May 1981 till the date of the award i.e. 24th August 1987. Further, interest from 25th May 1981 to 29th April 1982 at the rate of 4% and thereafter at the rate of 9% for one year was granted. It was further directed that interest at the rate of 15% after one year till the amount of compensation is paid be granted in favour of the claimant(s)-Respondent(s).

4. We may first decide the question of compensation in R.F.A. No. 41 of 1991 as fixed by the learned Land Acquisition Judge.

5. Ex.P-1 is the sale deed dated 8th February 1977 by which 5 biswas of land was sold for Rs. 42,000/- and, therefore, the rate comes to Rs. 8,000/per biswa. Ex.P-4 is Anr. sale deed dated 8th August 1985 by which one biswa of land was sold for Rs. 25,000/-. Similarly, by Ex.P-5, one biswa of land was sold for Rs. 15,000/- on 6th January 1983. Ex.P-6 is Anr. sale deed dated 21st June 1984, by which 5 biswas of land was sold for Rs. 25,000/- and by the sale deed dated 21st June 1984 marked as Ex. P-7, two biswas of land was sold for Rs. 12,500/-. From the evidence on record as well as the impugned award it is clear that all the above transactions were in the same Revenue Estate of the acquired land. However, the learned Land Acquisition Judge has taken into consideration the abovesaid transactions while assessing the market value of the land and fixed the same at Rs. 4,000/per biswa.

6. Our attention has been drawn to an award dated 8th September 1992 passed by the learned Additional District Judge (I), Shimla in Land Reference No. 8-S/4 of 1988 which was in respect of land acquired for construction of Samoli Pul-Parsa Lower Koti Road. In that award the learned Land Acquisition Judge assessed the market value of the land on the basis of the present award.

7. We have perused the evidence on record and we have also noted that no evidence in support of the award of the Land Acquisition Collector was produced in the proceedings u/s 18 of the Act. We are satisfied that the market value of the land as fixed by the learned Land Acquisition Judge at the rate of Rs. 4,000/ per biswa was rightly and properly assessed and calls for no interference.

8. In R.F.A.No.187 of 1992, the learned Land Acquisition Judge reduced the value of ,the land to Rs. 1,000/- per biswa taking into consideration the fact that distance of the acquired land is about 5 Kms from the land acquired in R.F.A. No. 41 of 1991. This deduction, in our opinion was rightly and properly made. Therefore, the market value as assessed calls for no interference in respect of this award.

9. Solatium of 30% as awarded in both the cases was rightly done inasmuch as the award of the Land Acquisition Collector was made after amending Act No. 68 of 1984 came into force. In R.F.A. No. 41 of 1991, the learned Land Acquisition Judge has awarded interest from the date of publication of notification u/s 4 of the Act till the date of the award by the Land Acquisition Collector. This has been done under Sub-section (1-A) of Section 23 of the Act. This sub-section provides that in addition to the market value of the land, the Court shall in every case award an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of the publication of the notification u/s 4, Sub-section (1) of the Act to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier. This is precisely what has been done by the learned Land Acquisition Judge. Our attention has also been drawn to the decision of the Apex Court in Special Tahsildar (LA), P.W.D. Schemes, Vijayawada Vs. M.A. Jabbar, The Apex Court held that the owner of the land who has been deprived of the enjoyment of the land by having been parted with possession is entitled for an additional amount calculated at the rate of 12% per annum on the enhanced market value for the period between the date of notification and the date of award or date of taking possession of the land whichever is earlier. Therefore, granting of 12% interest, as stated above, by the learned Land Acquisition Judge is in accordance with law.

10. The learned Land Acquisition Judge further awarded interest at the rate of 9% per annum on the enhanced amount of compensation for one year from the date of the award i.e. 30th December 1985 and thereafter interest at the higher rate of 15% was allowed till the payment of enhanced amount. As per Section 28 of the Act if the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the Court may direct that the Collector shall pay interest on such excess sum at the rate of 9% per annum from the date on which the possession of the land was taken to the date of payment of such excess into Court. It has further been provided that the Court may also direct that where such excess or any part thereof is paid into Court after the date of expiry of a period of one year from the date on which possession is taken, interest at the

rate of 15% per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into Court before the date of such expiry. Therefore, the Land Acquisition Judge erred in law in awarding interest at the rate of 9% on the enhanced amount of compensation from the date of the award. This requires modification in view of Section 28 of the Act. Accordingly we direct that on the excess amount of compensation awarded by the Court, the claimants-Respondents shall be entitled to get 9% interest per annum from the date of taking over the possession of the land to the date of payment of such excess amount into Court and if such excess amount has not been paid within a year from the date of possession, the claimants shall be entitled to get interest at the rate of 15% per annum after the period of one year till the amount is paid/deposited in the Court.

11. A point has been urged that this interest is not payable either on the solatium or on the interest payable under Sub-section (1-A) of Section 23 of the Act. In Section 28 of the Act, the expression used by the Legislature is "if the sum....". We find from the latest Judgment of the Apex Court in *Mir Fazeelath Hussain and others Vs. Special Deputy Collector Land Acquisition, Hyderabad* [OVERRULED], that this point was duly considered by the Apex Court and held that the interest does not form part of the award as it would appear from combined reading of Sections 11, 23 and 26 of the Act. Further it was held that solatium is also not a part of the award inasmuch as Sub-section (1) of Section 26 of the Act specifically states that the award shall specify the amount awarded under each of the clauses of Sub-section (1) of Section 23, whereas solatium is dealt by Sub-section (2) of Section 23 of the Act. We, therefore, hold in view of the above ratio laid down by the Apex Court that interest shall not be payable on solatium paid under Sub-section (2) of Section 23 and also on interest paid under Sub-section (1-A) of Section 23 of the Act.

12. With the above modification regarding interest u/s 28 of the Act, the award passed by the learned Land Acquisition Judge stands and the appeal, namely, R.F.A. No. 41 of 1991 along with Cross Objections No. 307 of 1992 are accordingly disposed of. The parties are left to bear their own costs.

13. Regarding R.F.A. No. 187 of 1992 and the Cross Objections 137 of 1993 we have already held that the compensation for the land was properly awarded by the learned Land Acquisition Judge and calls for no interference. The solatium of 30% has also been awarded legally. The learned Land Acquisition Judge has awarded interest at the rate of 12% per annum under Sub-section (1-A) of Section 23 of the Act w.e.f. 25th May 1981 till the date of the award i.e. 24th August 1987. Under Sub-section (1-A) of Section 23 of the Act interest at the rate of 12% per annum is payable from the date of the notification u/s 4 of the Act to the date of the award or date of taking over possession of the land whichever is earlier. The Land Acquisition Judge awarded this interest from 25th May 1981, presumably the possession was taken over on that date but in view of

the clear provision in the above Sub-section and the ratio laid down in M.A. Jabbar's case (supra) by the Apex Court, the claimants-Respondents shall be entitled to get interest in the case in hand from the date of notification issued u/s 4 of the Act i.e. from 23rd February 1985. Under the Act, the claimants-Respondents shall be entitled to get interest from the date of notification issued u/s 4 of the Act i.e. 23rd February 1985. This portion of the award stands modified accordingly. The learned Land Acquisition Judge has also awarded interest at the rate of 4% from 25th May 1981 to 29th April 1982 and thereafter at the rate of 9% for one year and 15% after one year till the amount of compensation is paid. This portion of the award also needs modification in view of the clear provision of law as stated in R.F.A. No. 41 of 1991. Accordingly, the claimants-Respondents shall be entitled to get interest u/s 28 of the Act at the rate of 9% on the amount awarded by the learned Land Acquisition Judge in excess of the award of the Collector from the date of possession of the land which in this case shall be 23rd February 1985 as Section 4 notification was issued after the land was taken over. Thereafter on the above excess amount, the claimants-Respondents shall be entitled to get interest at the rate of 15% after one year from 23rd February 1985 till the excess amount has been deposited or paid to the claimants-Respondents. In calculating this State of H.P. and Ors. v. Ramji Dass Chauhan S.N. Phukan, C.J. & A.L. Vaidya, J excess amount, the interest awarded under Sub-section (1-A) of Section 23 of the Act and also solatium shall be taken into consideration.

14. With the above modification of the award in R.F.A. No. 187 of 1992 and the connected Cross Objections No. 137 of 1993 are disposed of. However, the parties are left to bear their own costs.