**(2004) 05 SHI CK 0010**

**In the High Court Of Himachal Pradesh**

**Case No :** Regular First Appeal No. 354 of 2001

State of Himachal Pradesh and Others — APPELLANT

Vs

Satya Pal and Others — RESPONDENT

**Date of Decision :** 05-05-2004

**Acts Referred:**

Land Acquisition Act, 1894 — Section 23(1

**Citation :** (2004) 2 ShimLC 26

**Hon'ble Judges :** R.L. Khurana, J

**Bench :** Single Bench

**Advocate :** M.S. Chandel, A.G. and Ashutosh Burathoki, A.A.G, for the Appellant; G.C. Gupta and Mohinder Gautam, for the Respondent

## Judgement

R.L. Khurana, J.—The present appeal has been directed by.the Appellant State of Himachal Pradesh u/s 54 of the Land Acquisition Act, 1894 (for short: the Act) against the award dated 23.3.2000 of the learned Additional District Judge, Shimla, as modified/amended on review vide order dated 3.6.2000.

2. Land measuring 28 Biswas belonging to the Respondents in Chack Saruila - Baruila, came to be acquired by the Appellant under the provisions of the Act for a public purpose, namely, laying pipe line for water supply scheme from Dhalli to Sanjauli. Relevant notification u/s 4 of the Act was issued on 26.9.1988. The Collector, Land Acquisition vide his award dated 23.10.1989 determined the market value of the land acquired at Rs. 7,685 per bigha.

3. Aggrieved by the award the Respondents preferred an application u/s 18 of the Act before the Collector, seeking a reference to the Court for determination of the market value of their acquired land. On a reference having been made to him, the learned Additional District Judge, on the basis of the evidence placed before him, assessed the market value of the acquired land vide the impugned award at Rs. 58,890 per biswas. The learned Additional District Judge further held that the Respondents were also entitled to:

(a) Solatium at the rate of 30% towards compulsory acquisition charges;

(b) Additional compensation u/s 23(1-A) at the rate of 12% per annum from 1.1.1988 till 23.10.1989; and

(c) Interest at the rate of 9% per annum for one year from" 1.1.1988 and thereafter at the rate of 15% per annum till the date of payment of the amount.

4. Aggrieved by the award of the learned Additional District Judge, the Appellant is before this Court by way of the present appeal.

5. At the very out-set a contention was raised on behalf of the Appellants that the Respondents are not entitled to any compensation for the land inasmuch as they are not the owners thereof. It was contended that the land originally belonged to Mohammedan owners on whose migration to Pakistan the same came to be vested in the Custodian Department as custodian property. It was further contended that the names of the Respondents are being recorded in the revenue record as in possession of the land in question as non-occupancy tenants under the Provincial Government, which entries are wrong and do not confer any right on title on the Respondents.

6. The contention raised on behalf of the Appellant has no merit and is simple to be rejected.

7. In Sharda Devi Vs. State of Bihar and Another, after the land was acquired under the Act by the State of Bihar, the title of the Appellant therein to the acquired land was disputed by averring that the land belonged to the State even before acquisition. Therefore, the State of Bihar by raising such a dispute before the Collector sought a reference to be made to the Court u/s 30 of the Act. It was held by the Hon''ble Supreme Court:

To sum up, the State is not a ''person interested'' as defined in Section 3(b) of the Act. It is not a party to the proceedings before the Collector in the sense, which the expression ''parties to the litigation'' carries. The Collector holds the proceedings and makes an award as a representative of the State Government. Land or an interest in land pre-owned by the State cannot be the subject-matter of acquisition by the State. The question of deciding the ownership of the State or holding of any interest by the State Government in proceedings before the Collector cannot arise in the proceedings before the Collector [as defined in Section 3(c) of the Act]. If it was Government land there was no question of initiating the proceedings for acquisition at all. The Government would not acquire the land, which already vests in it. A dispute as to the pre-existing right or interest of the State Government in the property sought to be acquired is not a dispute capable of being adjudicated upon or referred to the Civil Court for determination either u/s 18 or Section 30 of the Act. The reference made by the Collector to the Court was wholly without jurisdiction and the Civil Court ought to have rejected the same. All the proceedings u/s 30 of the Act beginning from the reference and adjudication thereon by the Civil Court suffer from lack of inherent jurisdiction and are therefore a nullity liable to be declared so.

8. In Special Land Acquisition and Rehabilitation Officer, Sagar Vs. M.S. Seshagiri Rao and Another, some land was granted to the Respondent therein by the then State of Mysore on the condition that the grantee would surrender the same as and when required by the State Government without claiming compensation therefor. The State Government instead of availing the condition of the grant by calling upon the grantee to surrender the land, proceeded to acquire the same under the provisions of the Act. It was held that once the State had proceeded to acquire the land under the Act, it has to pay compensation for the acquired land under the Act.

9. A similar view was again taken by the Hon''ble Supreme Court in Special Land Acquisition Officer, Hosanagar Vs. K.S. Ramachandra Rao and Others,

10. In view of the above settled law, it is now not open to the Appellant to contend that the State was the owner of the land acquired even before its acquisition and that the Respondents, in whose favour the award was made by the Collector, are not the owners thereof and, therefore, not entitled to receive the compensation therefor.

11. As stated above, the learned Additional District Judge has assessed the market value of the land at Rs. 58,890 per biswas.

12. This Court in R.F.A. No. 171 of 1995, Sharwan Kumar and Ors. v. Land Acquisition Collector and Anr. and other connected matters decided on 30.7.2003 has assessed the market value of the land involved therein at Rs. 30,000 per biswas. The notification u/s 4 of the Act in the said case is the same as in the present case. The said land was also acquired for the same public purpose.

13. Therefore, in view of the same, the market value of the acquired land in the present case also needs to be assessed at the similar rate. It is, as such, held that the Respondents would be entitled to compensation for their acquired land at the rate of Rs. 30,000 per biswas instead of Rs. 58/890 per biswas as assessed by the learned Additional District Judge.

14. Another error which has been committed by the learned Additional District Judge is with regard to award of additional compensation u/s 23(1-A) of the Act and interest with effect from 1.1.1988 There is nothing on the record to suggest as to how the date 1.1.1988 was fixed and arrived at.

Section 23(1-A) of the Act provides:?

In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum 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), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

 

Explanation.?In computing the period referred to in this Sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

15. A bare reading of the above provision shows that additional compensation at the rate of 12% per annum is awardable on the market value of the land as assessed u/s 23(1) of the Act for the period commencing on and from the date of publication of the notification u/s 4 of the Act till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

16. The notification u/s 4 of the Act in the present case though is dated 26.9.1988, admittedly, was published in the H.P. Gazette on 29.10.1988. The award was made by the Collector on 23.10.1989. Though there is no material on the xecord to show as to when the possession of the acquired land was taken, a perusal of the award dated 23.10.1989 of the Collector shows that the possession of the acquired land was to be taken from kharif 1989, that is, after the making of the award. Therefore, the Respondents are entitled to additional compensation u/s 23(1-A) of the Act from 29.10.1988 (the date of publication of the notification u/s 4 of the Act) till 23.10.1989, that is, the date of making of the award by the Collector.

17. Similarly, interest u/s 28 of the Act on the enhanced amount is payable from the date of possession till the date of payment of such amount at the rate of 9% per annum for the first year and thereafter at the rate of 15% per annum.

18. As stated above, the learned Additional District Judge has allowed interest with effect from 1.1.1988 though the possession of the acquired land is shown to have been taken after the making of the award. The Respondents are entitled to interest from the date the possession of the acquired land was taken till the date of payment of the enhanced amount.

19. Resultantly, the present appeal is partly allowed and the impugned award dated 23.3.2000 as modified/amended on 3.6.2000 is modified as under:?

(a) the Respondents would be entitled to compensation for their acquired land at the market value of Rs. 30,000 per biswa;

(b) they shall be further entitled to additional compensation u/s 23(1-A) of the Act at the rate of 12% per annum on the amount assessed under (a) above from 29.10.1988 (the date of publication of the notification u/s 4 of the Act) till 23.10.1989 (the date of making of the award by the Collector).

(c) the Respondents would also be entitled to solatium at the rate of 30% of the amount assessed under (a) above; and

(d) interest on the amount assessed at (a) and (c) at the rate of 9% per annum from the date of taking of possession of the acquired land for one year and thereafter at the rate of 15% per annum till the date of payment'' deposit of the enhanced amount.

20. The parties are left to bear their own costs. CMP No. 690 of 2003.

21. Infructuous in view of the orders passed in the main matter.