

(2005) 03 SHI CK 0034

In the High Court Of Himachal Pradesh

Case No : C.M.P. (M) No's. 107 in Regular First Appeal No's. 68 of 2005 and
C.M.P. (M) No's. 108 in Regular First Appeal No's. 69 of 2005

State of Himachal Pradesh and Others

APPELLANT

Vs

Suresh Chand and Others and Uma Devi and Others

RESPONDENT

Date of Decision : 10-03-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 18, 18(2)
Limitation Act, 1963 — Section 5

Citation : (2005) 2 ShimLC 49

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Ashutosh Burathoki, A.A.G, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

V.M. Jain, J.—This order shall dispose of the abovementioned applications u/s 5 of the Limitation Act filed by the Appellants as also the main appeals filed by them as common question of law and fact are involved in these appeals and the applications. For the purpose of convenience the facts from RFA No. 68 of 2005 may be noticed.

2. The land of claimant-Respondents Suresh Chand and Subash Chand was acquired by the State of Himachal Pradesh and the Collector had given the Award of compensation in respect of the acquired land. Aggrieved against the Award given by the Collector, the claimant-Respondents filed petition u/s 18 of the Land Acquisition Act before the Collector for making a reference to the District Judge, seeking enhancement of the compensation amount. In pursuance thereof, the Collector made a reference to the District Judge u/s 18 of the Land Acquisition Act, on the petition filed by the claimant-Respondents Suresh Chand and Subash Chand. During the pendency of the aforesaid reference before the District Judge, the learned Counsel appearing for the claimant-Respondents (who were

Petitioners before the District Judge) made a statement before the learned District Judge and in pursuance of the said statement the said reference petition u/s 18 of the Land Acquisition Act was dismissed by the learned District Judge, as "not pressed", vide order dated 23.6.2004. Aggrieved against the aforesaid order dated 23.6.2004 passed by the learned District Judge, the State of Himachal Pradesh and the Executive Engineer, HP PWD filed the present appeal in this Court, challenging the aforesaid order dated 23.6.2004 by which the reference petition of the present Respondents was dismissed as "not pressed". Since the appeal was barred by time, application u/s 5 of the Limitation Act was filed seeking condonation of delay in filing the appeal. As per the office report, the delay was of five months and one day in filing the appeal.

3. At the outset, it was put to the learned Counsel for the Appellants as to how the present appeal filed by the State of Himachal Pradesh was maintainable in this Court against the order dated 23.6.2004 and secondly what necessitated the Appellants to file the present appeals in this Court even when the reference petition filed by the Respondents had been dismissed as "not pressed". Even though, only the application u/s 5 of the Limitation Act was listed for hearing, the learned Counsel appearing the Appellants submitted before me that he was ready with the arguments in the main appeals and had no objection in case the arguments in the main appeals were also heard while hearing the arguments in the applications u/s 5 of the Limitation Act.

4. The learned Counsel appearing for the Appellants submitted before me that the learned District Judge could not have dismissed the reference petition u/s 18 of the Land Acquisition Act as "not pressed" and was required to answer the reference in accordance with law, as per the law laid down by the Hon"ble Supreme Court in the case of Khazan Singh Vs. Union of India, Secondly, it was submitted that the Collector had awarded interest on the compensation amount contrary to the law laid down by the Hon"ble Supreme Court in the case of Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, and for this reason, the Appellants were aggrieved against the order passed by the District Judge dismissing the reference as "not pressed" and this necessitated the filing of the present appeals in this Court.

5. After hearing the learned Counsel for the parties and perusing the record, in my opinion, there is no merit in the main appeals filed by the Appellants. I am further of the opinion that no useful purpose will be served in deciding the applications u/s 5 of the Limitation Act seeking the condonation of more than 5 months delay in filing the appeals when the appeals have no merit and are liable to be dismissed.

6. In Khazan Singh's case (supra), the question before the Hon"ble Supreme Court was as to whether the reference made by a Collector u/s 18 of the Land Acquisition Act could be dismissed for default. In the above reported case the Court dismissed the reference by the claimant for default as he failed to be present when the matter was taken up. He made an unsuccessful bid to have the

reference restored and the said order was upheld by the High Court. It was under those circumstances that the matter came up before the Hon''ble Supreme Court. After hearing the entire matter, it was held by the Hon''ble Supreme Court that the Civil Court has to pass an award in answer to the reference made by the Collector u/s 18 of the Act and that non-participation of any party would not confer jurisdiction on the Court to dismiss the reference for default. In my opinion, the law laid down by the Hon''ble Supreme Court in his authority would be of no help to the Appellant-State to challenge the aforesaid order passed by the District Judge by which the reference petition filed by the claimant-Respondents was dismissed as "not pressed". If the claimants who had sought reference u/s 18 of the Land Acquisition Act did not press the reference before the learned District Judge, the learned District Judge would have no option but to dismiss the reference petition as "not pressed" and this is exactly what was done by the learned District Judge in the present case. Since the reference was dismissed as "not pressed" by the learned District Judge, necessary implication would be that the reference had been declined by the learned District Judge, in view of the stand taken by the claimants, who had sought the reference. In this view of the matter, I am of the opinion, that the order under appeal cannot be set aside only on the ground that the learned District Judge had dismissed the reference as "not pressed".

7. Furthermore, Section 18 of the Land Acquisition Act, 1894 was amended in the State of Himachal Pradesh vide H.P. Act No. 9 of 1964. Sub-Section 2A to Section 18 of the Land Acquisition Act was added in the State of Himachal Pradesh. The same reads as under:

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.

8. From a perusal of the above, it is clear that in the State of Himachal Pradesh where the State Government considers that the amount of compensation awarded by the Collector u/s 11 of the Land Acquisition Act is excessive, even the State Government is competent to seek reference to the District Judge for determination of the amount of compensation and for this purpose the State Government is competent to require the Collector by a written application to refer the matter to the Court in this regard. In the present case, admittedly the State of Himachal Pradesh had not sought any reference to the Court against the award given by the Land Acquisition Collector and apparently the State of Himachal Pradesh was satisfied with the award given by the Collector. Under such circumstances, if the reference made by the Land Acquisition Collector u/s 18 of

the Land Acquisition Act to the District Judge, at the behest of the claimants had been dismissed as not pressed by the learned District Judge, in my opinion, the State would not be competent to challenge the said order by the District Judge dismissing the reference as "not pressed", since the reference was sought by the claimants and not by the State and the claimants had got the said reference dismissed as not pressed. Under such circumstances, the State of Himachal Pradesh could not have filed the appeals against the aforesaid order dated 23.6.2004 passed by the learned District Judge.

9. The question as to whether the Collector had awarded more interest to the claimants than permissible, in my opinion, could not be made the basis for the State of Himachal Pradesh to challenge the aforesaid order dated 23.6.2004 passed by the learned District Judge dismissing the reference as "not pressed", since the reference was sought by the claimants and not by the State of Himachal Pradesh. As referred to above, the State of Himachal Pradesh had accepted the award given by the Collector and had not sought a reference to the learned District Judge, even though the State of Himachal Pradesh was competent to seek a reference in view of the provisions of Section 18(2)(a) of the Land Acquisition Act, as added in the State of Himachal Pradesh vide H.P. Act No. 9 of 1964.

10. In view of the detailed discussions above, in my opinion, both the appeals filed by the State of Himachal Pradesh are liable to be dismissed and are dismissed as such. The Registry is directed to assign serial numbers to both the appeals.

11. Since the appeals have been dismissed on merits, in my opinion, no useful purpose would be served in deciding applications bearing Nos. CMP (M) 107 and 108 of 2005 seeking condonation of delay in filing the appeals. The same stand disposed of accordingly along with the main appeals.