

(1986) 08 SHI CK 0002

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No's. 41 to 46 and 60 of 1976

State of Himachal Pradesh

APPELLANT

Vs

Chhaju Ram and etc.

RESPONDENT

Date of Decision : 13-08-1986

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 23(2), 28, 30(1), 30(2)
Land Acquisition Act, 1894 — Section 23(1A), 28(2)

Citation : AIR 1987 HP 79 : (1986) ShimLC 261

Hon'ble Judges : V.P. Bhatnagar, J

Bench : Single Bench

Advocate : P.N. Nag, General and M.S. Guleria, Asst. Advocate General, for the Appellant; R.K. Sharma and O.P. Sharma, for the Respondent

Judgement

V.P. Bhatnagar, J.—The benefits which accrue to the owners of the acquired land or persons interested therein under the provisions of the Land Acquisition (Amendment) Act, 1984 (Act No. 68 of 1984) (for short, the amending Act of 1984) and particularly the transitional provisions incorporated in Section 30, *ibid* fall for consideration in these seven Regular First Appeals.

2. In all these cases, land was acquired for the purpose of constructing Pong Dam in the State of Himachal Pradesh. The controversy between the parties pertains to the market-value of the acquired land. It has been conceded by the learned counsel for the parties that the capitalised value of similar type of land stands finally determined by the Supreme Court in *Union of India and Another Vs. Shanti Devi and Others*, Thus, there is no dispute that the amount awarded by the learned District Judge in each case has to be reduced by 25% as was done in *Shanti Devi's* case (*supra*).

3. The particulars of each case and the amount payable therein are indicated in the following table :

Sr. No.

No. & Year of RFA

Market-value awarded by District Court.

Market-value payable as per S.C. decision (25% less than awarded by the District Judge.

Excess market-value awarded (col. 3-col. 4)

1.

2.

3

4

5

1.

45/76

Rs. 19,2707-

Rs. 14,452.50

Rs. 4,817.50

2.

41/76

Rs. 24,120/-

Rs. 18,090/-

Rs. 6,030/-

3.

42/76

Rs. 24,120/-

Rs. 18,090/-

Rs. 6,030/-

4.

43/76

Rs. 22,700/-

Rs. 17,025/-

Rs. 5,675/-

5.

44/76

Rs. 11,350/-

Rs. 8,512.50

Rs. 2,837.50

6.

46/76

Rs. 40,910/-

Rs. 36,682.50

Rs. 12,227.50

7.

60/76

Rs. 11,350

Rs. 8,512.50

Rs. 2,837.50

The amount of excess market-value awarded in each case has been given in column No. 5 above and the appeals, to that extent, have to be allowed.

4. The total amount of compensation payable in each case in view of the provisions of amending Act of 1984, however, needs determination.

5. Sub-section (1-A) of Section 23 of the Land Acquisition Act, 1894 (hereinafter referred to as the principal Act) was inserted in the principal Act by the amending Act of 1984. It provides that the Court shall award in every case an amount calculated at the rate of 12% per annum on the market-value of the land for the period commencing on and from the date of publication of notification u/s 4(1) of the principal Act to the date of the award of the collector or the date of taking possession of the land, whichever is earlier. The aforesaid amount of interest has to be awarded in addition to the market-value of the land determined under Sub-section (1) of Section 23 of the principal Act.

6. The amending Act of 1984 came into force on September 24, 1984 on which date it received the assent of the President and was also published in the Gazette of India, Extraordinary. Sub-section (1) of Section 30 of the said Act pertains to the application of Sub-section (1-A) of Section 23 of the principal Act with retrospective effect. It reads :

"30. Transitional provisions.-- (1) The provisions of Sub-section (1-A) of Section 23 of the principal Act, as inserted by Clause (a) of Section 15 of this Act, shall

apply, and shall be deemed to have applied, also to, and in relation to,--

(a) every proceeding for the acquisition of any land under the principal Act pending on the 30th day of April, 1982 (the date of introduction of the Land Acquisition (Amendment) Bill, 1982, in the House of the People), in which no award has been made by the Collector before that date;

(b) every proceeding for the acquisition of any land under the principal Act commenced after that date, whether or not an award has been made by the Collector before the commencement of this Act."

It means that the provisions of Section 23(1-A) of the principal Act would apply to all acquisition proceedings which are pending on April 30, 1982 but where Collector has not made his award before that date. The said provisions will also apply to all acquisition proceedings commenced after April 30, 1982. In other words, the provisions of Section 23(1-A) will not apply where Collector has made his award before April 30, 1982 but would apply to all other cases. It means that the respondents in the appeals under consideration are not entitled to the benefit of Section 23(1-A) of the (principal Act as inserted by the : Ed.) amending Act of 1984 and, therefore, additional amount to be calculated at the rate of 12% on the market-value is not payable to them within the ambit of the said Section because, admittedly, the awards in all these cases were made by the Collector before April 30, 1982.

7. As regards the payment of solatium (compulsory acquisition charges), it has been held by the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, that the relevant provisions of Section 23(2) of the principal Act as amended would apply to all acquisition proceedings pending on April 30, 1982 before the Collector or Court or High Court or Supreme Court. The amending Act of 1984 enhances the quantum of solatium from 15% to 30% on the market-value of the land. It has, therefore, been contended on behalf of the land owners that solatium should be paid to them at the rate of 30% instead of 15%. This very point fell for determination in State of Himachal Pradesh v. Badri Nath Kapoor (RFA No. 79 of 1974) decided by me on October 28, 1985 (reported in ILR (1986) H P 167), wherein it was observed as follows :

"....learned counsel for the claimant, has drawn my attention to the provisions of Section 30(2) of the Land Acquisition (Amendment) Act, 1984 and the interpretation the aforesaid provisions have received at the hands of the Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, to urge that the claimant should be paid compulsory acquisition charges at the rate of 30% instead of 15%. Bhag Singh's case (supra) is not a direct authority on this point because the appeal in that case had been preferred by the claimant. In the present case, the appeal has been preferred by the State of Himachal Pradesh against the enhancement and it cannot be said that the present order being passed is "in

appeal against any such award" within the ambit of Section 30(2) of the Land Acquisition (Amendment) Act, 1984. In case, hypothetically speaking, the State Government decides to withdraw this appeal, it will have to be dismissed and consequently there will be no proceedings left before the Court wherein enhanced amount of solatium could be awarded."

The above decision, however, has been given per incurium inasmuch as the law laid down by the Supreme Court in *State of Punjab Vs. Mohinder Singh and Another*, was not available. In that case, no merit was found in the appeal preferred by the State of Punjab as regards the quantum of compensation. All the same, the respondents (claimants) were held to be entitled to the benefit of the provisions of the amending Act of 1984 and, therefore, to 30% solatium. Mohinder Singh's case (supra) was affirmed by a three-judge Bench of the Supreme Court in *Bhag Singh's case* (supra). The above decisions being binding on this Court, it is held that the respondents are entitled to the enhanced rate of 30% for calculating solatium notwithstanding the fact that the present appeals have been preferred by the State of Himachal Pradesh and that the respondents have not filed any appeal/ cross-objections.

8. It has also been urged on behalf of the State of Himachal Pradesh that solatium at the rate of 30% is to be calculated only on the enhanced amount of compensation and not on the total market-value arrived at by the Collector and revised by the Court. Once again, this submission was considered by me in *State of Himachal Pradesh v. Liaq Ram*, R.F.As. Nos. 10 and 61 of 1975 (reported in *State of Himachal Pradesh Vs. Liaq Ram*, It was therein held :

".....This submission, in my view, is against the express provisions of Section 23, Subsection (2) as amended by Act No. 68 of 1984 if I may say so, militates against the very ratio of *Bhag Singh and Others Vs. Union Territory of Chandigarh* through the land acquisition collector, Chandigarh, as noticed above.

Sub-section (2) of Section 23 reads asunder :

"In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value in consideration of the compulsory nature of the acquisition."

The plain language of Sub-section (2) of Section 23 quoted above makes it abundantly clear that the solatium of thirty per centum is to be awarded on the market-value. Under no stretch of imagination, it can be stated that the enhanced amount of compensation is the market-value of the land. As held in *Joginder Singh and Others Vs. State of Punjab and Another*, , the process of quantification of compensation passed through several stages from the Land Acquisition Officer to the District Judge and thereafter to the High Court. This process is merely one of computing the value of land on the principles enacted in the Land Acquisition Act. However, the right to the compensation so quantified refers back to the date of acquisition. In fact, this date has been clearly specified in the first clause of Sub-section (1) of Section 23 of Land Acquisition Act, 1894

wherein it has been provided that the market-value of the land has to be determined at the date of the publication of the notification u/s 4, Sub-section (1).

Once it is conceded that the amended provisions of Section 23, Sub-section (2) regarding the award of solatium would govern the determination of this appeal, as held in Bhag Singh's case (supra), no distinction can be made in-between the amount awarded by the Collector or the amount enhanced later on by the District Judge, the High Court, or the Supreme Court."

I have no reason to take a view different from what has been stated above. The respondents would accordingly be entitled to solatium at the rate of 30% on the market-value of the land as stated in column No. 4 of the table given in para 3 above.

9. The determination of interest payable on excess compensation allowed by the Court is governed by the provisions of Section 28 of the principal Act. This Section also stands amended and it has been held in Bhag Singh's case (supra) that the amended provisions would apply to all acquisition proceedings pending on April 30, 1982 before the Collector or Court or High Court or the Supreme Court According to these amended provisions, the Collector has to pay interest on the excess amount at the rate of 9% per annum from the date on which he took possession of the land to the date of payment of such excess amount into the court and where the above period exceeds one year, the rate of interest payable after expiry of one year would be calculated at the rate of 15% per annum. The excess amount for the purposes of Section 28 means the amount finally allowed by the Court or the High Court or the Supreme Court, as the case may be, over and above the amount of compensation assessed by the Collector. The respondents will accordingly be paid interest on the excess amount of compensation as indicated above.

10. As regards the payment of interest under the amended provisions of Section 34, the matter has been elaborately discussed and adjudicated upon in Land Acquisition Collector v. Jeet Ram R.F.A. (LA) No. 128 of 1985 decided on January 10, 1986 (reported in Land Acquisition Collector, H.P., P.W.D., Solan and Another Vs. Jeet Ram, This would govern the amount of interest payable to the respondents u/s 34.

11. The order passed by the learned District Judge in all these cases shall stand modified to the extent as indicated above and the appeals are consequently allowed in part. The parties are, however, left to bear their own costs throughout.