

(1986) 03 SHI CK 0012
In the High Court Of Himachal Pradesh
Case No : Civil Review No. 26 of 1985

State of Himachal Pradesh

APPELLANT

Vs

Dr. Vinod Kumar Sud and Others

RESPONDENT

Date of Decision : 06-03-1986

Acts Referred:

Land Acquisition (Amendment) Act, 1984 — Section 15, 30(1), 30(2)
Land Acquisition Act, 1894 — Section 23(1), 23(1A), 23(2), 4(1)

Citation : (1986) ShimLC 148

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

Bench : Single Bench

Advocate : P.N. Nag, General and M.S. Guleria, Asstt. Advocate General, for the Appellant; K.D. Sood, for the Respondent

Judgement

V.P. Bhatnagar, J.—While disposing of Regular First-Appeal (L-A) No. 14 of 1972 and Regular First Appeal (L-A) No. 1 of 1973 vide judgment, dated October 1, 1985, the Respondent Dr. Vinod Kumar Sud and others were inter alia, allowed "an amount calculated at the rate of 12% per annum on Rs. 5,650 for the period commencing on and from the date of the publication of notification u/s 4, Sub-section (1) of the Land Acquisition Act to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier, as postulated in Section 23(1A) of the Land Acquisition Act...." The Review Applications No. 26 of 1985 and No. 27 of 1985 have been filed by the State of Himachal Pradesh on the ground that Section 23(1A) is not applicable to the facts of this case and that an error has crept into that extent.

2. Section 23(1A) of the Land Acquisition Act, 1894 has been introduced by Act No. 68 of 1984. This amending Act came into force w.e.f. September 24, 1984 when it received the assent of the President. It reads as follows:

(1-A) 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.

Ordinarily, the additional amount postulated under Sub-section (1-A) of Section 23 would become payable in cases wherein the acquisition proceedings commenced after September 24, 1984. However, Sub-section (1) of Section 30 of the Land Acquisition (Amendment) Act, 1984 imparts retrospective applicability to the provisions of Sub-section (1-A) of Section 23 of the Land Acquisition Act, 1894. Sub-section (1) of Section 30 of the Land Acquisition (Amendment) Act, 1984 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 date of commencement of this Act.

In other words, the provisions of Sub-section (1-A) of Section 23 will apply to every proceeding for acquisition of land which has commenced after April 30, 1982 [the date of introduction of the Land Acquisition (Amendment) Bill, 1982 in the House of the People]. These provisions will also apply to such other proceedings which are pending on April 30, 1982 but in which an award is yet to be made by the Collector. In the present case, it is admitted on all hands that the award had been made by the Collector much before April 30, 1982. If so, it is manifest that the additional amount of 12% per annum on the market value to be determined u/s 23(1) is not admissible to the Respondents and, to that extent, the judgment, dated October 1, 1985 is to be reviewed.

3. Shri K.D. Sood, learned Counsel for the Respondents, during the course of addressing arguments in this petition, has urged and prayed that the Respondents are, in any case, entitled to solatium at the rates increased by way of amending Sub-section (2) of Section 23 of the Land Acquisition Act, 1894. This sub-section, as amended reads:

(2) 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 amendment has been brought about, once again, by the Land Acquisition (Amendment) Act, 1984. Sub-section (2) of Section 30 of the said amending Act gives retrospective effect to the provisions of Sub-section (2) of Section 23.

These provisions were considered by the Hon''ble Supreme Court in Bhag Singh and Others Vs. Union Territory of Chandigarh through the land acquisition collector, Chandigarh, wherein it has been held that the provisions of Section 23(2), as amended, would apply to all acquisition proceedings pending on April 30, 1982 before the Collector or the Court or the High Court or the Supreme Court. As the acquisition proceedings which were the subject-matter of the appeal decided on October 1, 1985 were pending on the said date viz., April 30, 1982, solatium had to be allowed to the Respondents in accordance with the amended provisions. It means that they were entitled to compulsory acquisition charges at the rate of 30% on the market value in place of 15% of such value as was being allowed prior to the amendment in question.

4. In view of the reasons given above, the judgment, dated October 1, 1985 is modified to the extent that the Respondents will not be entitled to the additional amount of 12% on the market value u/s 23(1-A) of the Land Acquisition Act, 1894. However, they will be paid solatium at the rate of 30% on the total market value amounting to Rs. 5,650 after adjusting the compulsory acquisition charges already awarded to them by the Collector (Rs. 496.50P). The review application is decided accordingly.

5. A copy of this order be placed in Civil Review No. 27 of 1985, which also stands disposed of by this order.