
(1980) 12 SHI CK 0006

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No"s. 392, 393 and 403 of 1980

State of Himachal Pradesh

APPELLANT

Vs

Jai Lal

RESPONDENT

Date of Decision : 01-12-1980

Acts Referred:

Land Acquisition Act, 1894 — Section 16, 18, 19, 25, 25(2)

Citation : (1980) 9 ILR HP 657

Hon'ble Judges : V.D. Misra, C.J;H.S. Thakur, J

Bench : Division Bench

Advocate : Inder Singh, General, for the Appellant;

Final Decision : Dismissed

Judgement

V.D. Misra, C.J.—This order will dispose of R.F. As. 392, 393 and 403 of 1980 since common questions of facts and law arise.

2. These appeals have been filed against the order of Shri Surendra Prakash, Additional District Judge, Kangra at Dharam-sala, to whom reference was made u/s 16 of the Land Acquisition Act. We need not go into the history of acquisition of land for the purpose of a reservoir of Beas Damat Pong. It: is given and discussed in detail in a Division Bench judgment of this Court in R.F.A. No. 220 of 1980-State v. Jiwan Singh, decided on 21st September, 1980.

3. The land in question in the present appeals is of tika Dobinda of Mauza Mohara, Tehsil Dehra. We may record at this stage that in all the references oral evidence was produced only by the claimants and no oral evidence was produced by the State. The learned Additional District Judge on the basis of evidence on record came to the conclusion that the land in question, that is, of tika Dobinda, could be compared with the lands of tikas Kather, Khan and Mohara from the productivity and fertility point of view. He relied on Ex. P-I, the judgment of Shri Roop Singh Thakur, Additional District Judge, dated 21-2-1977, in reference No. 399 of 1973, Beli Ram v. Collector. In this judgment Shri Thakur observed:

"In the award the Collector has clearly stated that since the land of this tika i.e. Khan compared favorably with tire land of tika Bihari the award whereof was announced on 2-4-1969, he had chosen to award the same rates in respect of different categories of lands in this tika as he had done in the case of tika Bihari.

The tika in question with which Shri Roop Singh Thakur was concerned, was tika Khan, Mauza Anour. He had proceeded on the basis of the Land Acquisition Collector holding it equivalent to tika Bihari in all respects. The result was that Shri Surendra Prakash held tika Dobinda equivalent to tika Khan which was equivalent to tika Bihari. There was nothing wrong in reaching this conclusion.

4. We have already discussed in the judgment R.F.A No. 220 of 1980 (supra) about the valuation of the land in tika Bihari. This judgment now becomes an instance of which we must take judicial notice.

5. At this stage, Mr. Inder Singh, the learned Advocate-General, informs us that the State has filed a review petition in respect of judgment in R.F.A. No. 220 of 1980. We cannot in this case stay our hands simply because a review petition has been filed. We have already gone through the records of the present appeals and we are proceeding to decide them.

6. The result of the above discussion is that we find that Shri Surendra Prakash was right in enhancing the compensation awarded to the claimants. We, therefore, dismiss all the appeals in limine.

7. Before parting with the case, we must record our dismay at the conduct of the State. The judgment was given by Shri Surendra Prakash as far back as 28-3-1979. While filing the present appeals, applications for staying the operation of the judgments have also been made. In other words, the State has not yet paid the enhanced amount in question to the claimants. We have a heady recorded in another case that since the State had taken over the duty of preparing the copies of the judgments, this right had been thoroughly misused by the State in not preparing the copies of the judgments for years, and thus indirectly with-holding the enhanced amounts from the claimants to which they were rightly entitled. We have also pointed out that, unfortunately, most of the claimants did not get proper legal advice, though evidently they had paid for the same. This we record because we have not come across a single case where Andhra Pradesh High Court lawyer had moved the Court to get the enhanced amount following the judgments of trial Judge. We can only trust and hope that wisdom will dawn on the State and they will have some pity and consideration for those luckless persons who had not only to leave their hearths and homes, but some of them had to leave even the State for being resettled in the deserts of Rajasthan.

8. Mr. Inder Singh raises one more objection in respect of R.F.A. No. 392 of 1980-State of Himachal Pradesh v. Jai Lal. This objection is that since the claimant did not ask specifically for any amount, the Additional District Judge had no jurisdiction to grant any enhancement. For this purpose he has taken us through

the application moved for reference and the reply there to of the Collector.

9. The question has to be decided in the background of this particular case. We have already pointed out the type of legal aid which these illiterate claimants were getting after paying for the same. We also find that the manner in which the application u/s 18 was drawn up leaves no doubt that the lawyer concerned was filing applications in good many cases at the same time. The application is a carbon copy which has certain blanks. These blanks have been filled in by hand. All types of objections have been raised in a sort of omnibus fashion. He has also raised an objection about the compensation awarded to the claimant. In paragraph 6 of the application it is specifically stated that the compensation of the land has not been assessed and awarded adequately. However, it is true that no specific amount has been claimed in the application. The Collector has also filed an omnibus reply. We see that this reply is a cyclostyled one. This is headed as comments. Evidently it has been filed u/s 19 of the Land Acquisition Act. But one thing we must highlight. It is this that no where in the comments the Collector raised any objection to the effect that reference is not proper since no specific amount has been claimed as enhancement. The learned Advocate-General, in order to show that this objection has been taken, refers to para 12 of the comments in which it has been stated "Not admitted, as no such compensation was claimed by the applicant at the time of hearing of objections u/s 9(3) of the L.A. Act, 1894". We are afraid that this is absolutely irrelevant. This para has relevance only to para 12 of the application where the claimant was claiming compensation for fences and retaining walls etc.

10. One more fact may also be noticed. Since thousands of persons were entitled to compensation, every thing evidently was being done on omnibus basis by the State and, unfortunately, also by the lawyers who had been engaged by the claimants. How we wish that the lawyers had gone into the facts of each individual case to ensure that justice was being done to each individual. But that was not to be. And at this stage, we cannot do anything more than express our sympathy for those illiterate residents of the area which was to be sub-merged by the dam for the benefit of the nation and to the ill-luck of those persons. Be that as it may, another development in the case was that claims of three persons were tried together. Case of Jai Lal was consolidated with the case of claim of Ramesh war Lai (R.F.A. No. 393 of 1980). The result of this consolidation was that the evidence was led only in the case of Ramesh war Lal. Another result which followed was that Jai Lal never went in the witness box. Evidently it was understood by the claimants as well as the State that the decisions have to be had in respect of the tikas as a whole and not in respect of each individual piece of land filling in a particular tika. Therefore, neither any objection was raised by the Collector in his comments nor it was argued by the State before the Additional District Judge.

11. At this stage, the learned Advocate-General, after going through the record, points out para 1 of the preliminary objections taken by the State. It may be

noticed again that the objections are cyclostyled and some additions have been made in hand at various places. The preliminary objection referred to by the Advocate-General reads thus:

"The Petitioner did not appear before the Collector Land Acquisition on the date of hearing objection u/s 9(3) of the L.A. Act and failed to put for his claim as such the claim of the Petitioner is barred u/s 25(2) of the L.A. Act.

This objection evidently was on the basis of not that the Petitioner did not in his application u/s 18 refer specifically to the amount which he was claiming for enhancement, but to the fact that no claim as required u/s 9(3) was made and, therefore, the Petitioner was barred u/s 25(2) of the Land Acquisition Act.

12. The trial Judge had framed the following four issues only:

1. Whether the compensation as assessed by the Collector awarded to the Petitioner in respect of the acquired land is inadequate, if so, what was the correct value of the land at the relevant time? OPP.

2. Whether the Petitioner is entitled to interest, if so, how much and at what rate? OPP?

3. Whether the claim of the Petitioners is barred under the provisions of Section 25(2) of the Land Acquisition Act? OPR.

4. Relief.

13. Issue No. 3 was decided against the State since it led no evidence. It was also held that a bare perusal of the award of Collector shows that the applicants had set up their claims which were much higher than awarded by the Collector pursuant to the notice u/s 9 of the Act.

14. In case the State had raised the objection now taken before us, it would have been in the issues claimed by the parties just like issue No. 3. We do not find from the grounds of appeal that such an issue was raised and argued before the trial Judge. We would expect such an objection not only to be taken in the grounds of appeal but also supported by an affidavit of the lawyer who argued the case.

15. On this question we have something more to say. Section 25 of the Land Acquisition Act shows that a party has the right to give sufficient reasons for having omitted to make his specific claim. The Judge has got a right, on being satisfied, to allow the applicant to make such a claim. Now, since the State failed to raise this objection during the course of trial, the applicant had no occasion to show sufficient cause for the omission. This right of the Petitioner was thus taken away by the State by its own conduct. We will, therefore, not allow the State at this stage to raise this plea for the first time.

16. We may note that the Advocate-General has cited before us AIR 1930 64 (Privy Council) , Lila Mahton Vs. Sheo Govind Singh, and The State of

Maharashtra Vs. Shantabai and Another, . The first case only lays down that the jurisdiction of the Judge is confined to only those questions which have been raised by the applicant. It is in the case of Shantabai (supra) where it is specifically laid down, after differing from the earlier decision referred to in the judgment, that unless a claimant puts forward a claim for a specific amount, his prayer for being awarded the proper amount cannot be taken into consideration and the amount awarded cannot be enhanced. This decision, in our opinion, is on the particular facts of the case which were before that Court and is not relevant to the facts of this case. We will say nothing more about it. In Lila Mahton's case, the only question of law decided is that the Court does not sit in appeal over the Collector and the jurisdiction of the Judge is confined to the one given to him under the Land Acquisition Act. There cannot be any controversy about the Law laid down by this judgment. Since the facts of that case have no relevance to the facts of the present case, we need not go further in this matter.

17. The result is that we reject the contention of the learned Advocate-General and dismiss this appeal also in limine.