

(1977) 08 SHI CK 0007

In the High Court Of Himachal Pradesh

Case No : First Appeal No's. 2 and 3 of 1971

State of Himachal Pradesh

APPELLANT

Vs

Rajkumar Rajinder Singh and Others

RESPONDENT

Date of Decision : 19-08-1977

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 21

Citation : AIR 1978 HP 36 : (1977) 6 ILR HP 537

Hon'ble Judges : R.S. Pathak, C.J.;T.U. Mehta, J

Bench : Division Bench

Advocate : Advocate General, for the Appellant; H.S. Thakar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Pathak, C.J.—This and the connected appeal have been filed by the State of Himachal Pradesh against the award of the learned District Judge, Mahasu, in two references made u/s 18 of the Land Acquisition Act, 1894.

2. The Himachal Pradesh Government issued two notifications in October 1967 u/s 4 of the Land Acquisition Act declaring that land in the villages of Shahdhar and Maihgaon in Tehsil of Rampur, District Mahasu was needed, for the purpose of widening the Sarahan-Daranghati road. The two parcels of land belonged to the respondent, Rajkumar Rajinder Singh. Thereafter, on following the further procedure detailed in the land Act the Collector made an award determining the compensation payable to the respondent at Rs. 1,437.50 in respect of the land in village Shahdhar and Rs. 2,831.87 for the land in village Majhgaon. In both cases, the compensation included 15% compulsory acquisition charges. The Collector made an order that the compensation so determined should not be paid over to the respondent without clearance being accorded by the Commissioner (Revenue). The respondent applied in both cases for a reference u/s 18 of the Act and claimed that the compensation determined was inadequate. The Collector filed an objection taking the point that the respondent was not entitled to to any compensation as the land in question had vested in the State u/s 27 of

the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act. The learned District Judge framed a number of issues, including an issue on the question whether the land acquired had vested in the State. On the latter issue he held that the respondent was admittedly holding land the annual land revenue of which exceeded Rs. 125/- and ordinarily his right, title and interest in the land would be deemed to have vested in the State by virtue of Sub-section (1) of Section 27 of the Act. But, the learned District Judge observed, the land fell within the scope of Sub-section (2) of Section 27, which provided that land under the personal cultivation of the land-owner would stand excluded from the operation of Sub-section (1) of Section 27 and would not vest in the State. On the merits of the claim of the respondent for enhanced compensation, he made an award on January 22, 1971 that the compensation awarded by the Collector was adequate and no increase was called for. Against the common award disposing of the two references the State has filed the present appeals,

3. It is urged on behalf of the appellant that the learned District Judge has erred in holding that the land acquired in the two villages was covered within the terms of Sub-section (2) of Section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act and therefore had not vested in the State. For the respondent it is urged that the plea is not open to the appellant in proceedings under the Land Acquisition Act that the land has vested in the State as such a plea is foreign to the scope of that Act. We have heard learned counsel for the parties, and we are of opinion that the respondent must succeed.

4. A conspectus of the provisions of the Land Acquisition Act points clearly to the conclusion that the proceedings contemplated therein are based on the assumption that the land does not belong to the State. It is impossible to conceive that the legislation should have been enacted for acquisition by the State of land already belonging to it. There is a detailed procedure "which must be pursued before the land can be acquired A notification is published that the land is likely to be needed for a public purpose (Section 4). The provision envisages that an authorised Government officer, his servants and workmen may survey the land and determine whether it is adapted for the public purpose in mind, and demarcate the land intended to be taken. Objections are invited to the acquisition of the land from persons interested therein (Section 5-A) and if despite those objections the Government is satisfied that the particular land is needed for a public purpose a declaration to that effect is made (Section 6). The Government directs the Collector to make order for the acquisition of the land (Section 7). The land is marked out and measured (Section 8), and notice is given publicly and also individually to occupiers and persons interested that the Government intends to take possession of the land and that claims to compensation may be made to the Collector (Section 9). Thereafter, the Collector makes an inquiry which culminates in an award of compensation and its apportionment between persons interested (Section 11). On making the award, possession of the land is taken by the Collector and thereupon it vests absolutely in the Government free from all encumbrances (Section 15). It is at once

apparent that this detailed procedure terminating in the vesting of the land in the Government cannot possibly be contemplated where ownership in the land already vests in the Government. Viewed in this context, the scope of a reference made u/s 18 of the Act must be limited to those matters which proceed on the basis that the land did not originally belong to the Government. Section 18 enables a person interested, who has not accepted the award, to apply to the Collector that the matter be referred for the determination of the Court on any one or more of the following objections (a) the measurement of the land, (b) the amount of compensation, (c) the person to whom it is payable, and (d) the apportionment of the compensation among persons interested. The Collector, u/s 19, makes a reference setting forth the particulars which the statute specifically considers necessary for the disposal of the reference. Section 20 requires the Court to proceed to determine the objection embodied in the reference. It is that objection which circumscribes the adjudication intended from the court in the disposal of the reference. Section 21, indeed, declares that the scope of the inquiry shall be restricted to a consideration of the interests of the persons affected by the objection.

5. It is true that in *Makhan Lal and Others Vs. Secy. of State* a Full Bench of the Allahabad High Court held that the question whether the land acquired in proceedings under the Land Acquisition Act was the property of the Government could be raised in reference before the Court. The learned Judges observed that the Act provided a complete machinery for the decision of all questions of title and interest that could arise in the course of the acquisition. Proceeding from there, they reasoned that therefore, a title to land claimed on behalf of the Secretary of State could be examined by the Court exercising functions under that Act. It seems to us with respect that the learned Judges have given too wide a construction to the scope of the Act where it provides for the adjudication of questions of title and interest. The scope of such adjudication must, in our opinion be limited within the object and purpose of the Act and the several provisions intended for achieving that object and purpose. From that standpoint the inference which must reasonably follow must be that the Act contemplates the adjudication of questions of title and interest of persons other than the Government which seeks to acquire the land. The question whether the Government already enjoys title in the land must be treated as outside the scope of adjudication under the Act. For the same reason we are unable, with respect, to follow the view taken in *Sujan Singh v. Secretary of State* AIR 1936 Pesh 217. Reference has also been made by the appellant to *The State of Bihar Vs. Dr. G.H. Grant and Another*, but in that case it appears that the land was acquired by the Government after proceedings had been initiated for acquisition under the Land Acquisition Act and an award had been made by the Collector. Now, in AIR 1930 64 (Privy Council) the Privy Council laid down that the jurisdiction of the Court under the Land Acquisition Act was a special one and was strictly limited by the terms of Sections 20 and 21 of the Act, and that when a specific objection was taken to the Collector's award the jurisdiction was confined to a

consideration of that objection. It was observed that if the only objection was to the amount of compensation that alone was the "matter", referred and the court had no power to determine and consider anything beyond it. Following that case, the Calcutta High Court held in *Secretary of State Vs. Shyamapada Banerjee*, that if the only objection before the court related to the amount of compensation, the court had no power to determine the question of title to the land, because in an inquiry as to the amount of compensation the only question was how much more the claimant was to get and how much more was the Government to pay. The respondent has also referred us to *The State of Madras Vs. K.N. Shanmugha Mudaliar and Others*, but there the State had commenced land acquisition proceedings and during their pendency issued a notification causing the "vesting" provisions under the Madras Estates Abolition Act to come into operation. A writ petition was filed in the High Court challenging the validity of the notification, and further proceedings in pursuance of the notification were stayed. When the land acquisition proceedings were resumed it was contended on behalf of the State that the land had vested in the State under the Abolition Act. The Supreme Court observed that as the State had initially chosen to proceed under the Land Acquisition Act it was bound to follow the procedure laid down under that Act. It was pointed out that it was after the land acquisition proceedings had been initiated that the notification under the Abolition Act was issued and further that the proceedings under that Act had been stayed. It appears to us that the facts are distinguishable, and this case does not advance the case of the respondent.

6. Our attention has been drawn by the appellant to the Land Acquisition (Himachal Pradesh) Amendment Act, 1964, which by amending Section 18 of the Land Acquisition Act has given to the State a right to apply for a reference to the Court and has empowered the Court to, reduce the amount awarded. It is not necessary for us to decide whether the court can, in the absence of a reference made at the instance of the State, proceed to reduce the compensation awarded by the Collector when disposing of a reference made at the instance of a person claiming greater compensation than awarded by the Collector. It is sufficient to say that even if the Court was so empowered, it cannot reduce the compensation to, a nil sum on the ground that title in the land vested always in the State and not in the claimant on the date when the land acquisition proceedings were commenced.

7. We are of opinion that it is not open to the State to take the plea in the present references that the land had vested in the State already when proceedings were initiated under the Land Acquisition Act. It may be open to the State to raise such a plea by way of suit.

8. In that view of the matter it is not necessary, we think, to enter into the question whether the land has vested in the State under Sub-section (1) of Section 27 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act.

9. In the result, the appeals fail and are dismissed with costs.