(2002) 11 SHI CK 0018

In the High Court Of Himachal Pradesh

Case No : Regular First Appeal No. 104 of 1994

State of H.P. and Another — APPELLANT

Vs

Kalawati and Others — RESPONDENT

Date of Decision : 01-11-2002

Acts Referred:

Land Acquisition Act, 1894 — Section 11, 16, 17, 18, 23
Registration Act, 1908 — Section 57(5)

Citation : (2003) 1 ShimLC 474

Hon'ble Judges : Kamlesh Sharma, J;Arun Kumar Goel, J

Bench : Division Bench

Advocate : Sanjay Karol, A.G. and Shubh Mahajan, A.A.G, for the Appellant; Bhupinder Singh Kanwar, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—It is proposed to deal with all these first appeals as well as cross-objections by this common judgment as they have arisen out of a common award, and those were clubbed together with the exception of award which is subject matter of R.F.A. No. 46 of 1995.

2. When hearing commenced in all these appeals and cross-objections, learned Counsel were not at variance that notification u/s 4 of the Land Acquisition Act, hereinafter referred to as "the Act" was issued on 17.7.1989. It was published on 23.12.1989 in Himachal Pradesh Rajpatra as well as in two newspapers i.e. Hindi Milap and Dainik Tribune on 13.10.1989. This was followed by notification under Sections 6 and 7 of the Act on 26.3.1990.

3. Thereafter Land Acquisition Collector issued notices u/s 9 of the Act, and announced his award on 30.6.1990. Public purpose for which the land was acquired was construction of Shoghi-Salana Road. He allowed compensation of the acquired land at the following rates:

Classification of land Rate per Bigha Kuhal Rs. 14,869 Kathuhal Rs. 11,895

Banjar Rs. 9,665 Banjar-II (Banjar Deom) Rs. 6,691 Banjar-III (Banjar Swam) Rs. 2,974 Banjar Kadim Rs. 1,040 Ghasni Rs. 446

4. In addition to this, compensation for fruit and non fruit trees, interest and solatium was also allowed as per law.

5. Respondents felt dissatisfied with this award and claimed references u/s 18 of the Act by approaching the Land Acquisition Collector to refer the matter to District Judge for determination of market value of the land in question as according to them, it was inadequate as offered by him (Collector).

6. On receipt of reference, learned District Judge issued notice to the Appellant/ State and after reply was filed, following issues were framed:

1. Whether the compensation awarded by the Collector for the acquired property is inadequate, if so, what was the market value of the acquired property at the relevant time? OPP.

2. Whether the Petitioners are entitled for compensation on account of severance of the holdings as alleged, if so, in what amount? OPP.

3. Whether the acquired land has not been properly demarcated and larger has been acquired than has been shown to have been acquired, if so, its effect? OPP.

4. Relief.

7. In case Land Reference No. 9-S/4 of 1991, out of which, Regular First Appeal No. 46 of 1995 has arisen, following issues were framed:

1. Whether the value of the acquired property as assessed by the Land Acquisition Collector is inadequate, if so, what was the market value of the acquired property at the relevant time? OPP.

2. Whether the Collector has taken into account for the purpose to award compensation, the lesser number of trees than actually were standing on the acquired land, if so, how many trees were standing thereon and with what effect? OPP.

3. Relief.

8. After considering oral and documentary evidence produced by the parties, learned District Judge, Shimla assessed compensation of the irrigated land i.e. Kuhal and Katul as one category at the rate of Rs. 35,000 per Bigha. Similarly, the rates of Bangar-I, Bangar-II and Bangar-III were assessed as one category and compensation was enhanced to Rs. 30,000 per Bigha. In addition to this, Banjar Kadim and Ghasni were classified as one category and compensation was assessed at the rate of Rs. 18,000 per bigha. In addition to this, he also allowed solatium as permissible under law and interest.

9. So far interest is concerned, it was made payable from the date prior to the date of issuance of notification u/s 4 of the Act i.e. from the date when

possession of the land in question was taken over. In this behalf, it may also be observed that learned Counsel for the parties were again not at variance that so far possession of the land in all these appeals is concerned, the same was taken over much before the date of publication of notification u/s 4 of the Act.

10. In the aforesaid background, learned Advocate General urged that so far grant of interest prior to notification u/s 4 of the Act is concerned, it is neither warranted by law, i.e. the Act nor it can be supported in the face of the precedents. Per him, when land is acquired under the Act, then the relevant date for determining market value of the property under acquisition is the date of publication of notification in Rajpatra u/s 4. He thus, submitted that so far grant of interest from a date prior to the date of notification u/s 4 of the Act by learned District Judge is concerned, the same cannot be sustained in these cases.

11. This plea has been controverted by Shri Bhupinder Singh Kanwar as well as Shri S.C. Sharma, learned Counsel for the Respondents in these cases.

12. By referring to Section 23(1-A) of the Act, both of them urged that this plea cannot be accepted. According to them, on a plain reading of this provision of the Act, Collector has to calculate while making award, interest at the rate of 12% per annum on such market value for the period commencing on and from the date of notification u/s 4(1) of the Act in respect of such land to the date of award of the Collector or the date of taking possession of the land whichever is earlier.

(Emphasis supplied)

13. Thus, according to them, no fault can be found with the impugned award and with the grant of interest at the rate of 12% per annum from the date of taking possession of the acquired land i.e. May, 1983 till date of publication of the notice. They also submitted that further interest allowed by learned District Judge at the rate of 9% per annum for a period of one year from the date of taking possession and then at the rate of 15% per annum till the enhanced amount is paid or deposited in Court also needs to be upheld. With a view to support this plea, reliance was placed by learned Counsel on Sections 28 and 34 of the Act as amended in the year 1984 by Central Act No. 16 of 1984.

14. For the purposes of assessing compensation under the Act, condition precedent, in our view is, that there has to be proceedings under the Act itself. It hardly needs to be said in this behalf that proceedings under the Act commence from the date of publication of notification u/s 4 thereunder followed by proceedings in accordance with law thereafter. Thus, if any action is taken prior to issuance of notification u/s 4 of the Act, it cannot be said to commence the proceeding for acquisition of the land under the Act. Source for initiating steps for acquisition is publication of notification u/s 4 thereof.

15. Faced with this situation, learned Counsel for the Respondents were unable to satisfy the Court as to how their clients are entitled to interest prior to the

date of issuance of notification u/s 4 of the Act.

16. Even otherwise, this matter is no more res integra in view of the authoritative pronouncement of the Supreme Court rendered in the case of Siddappa Vasappa Kuri and Another Vs. Special Land Acquisition Officer and anr, While dealing with the provisions of Section 23(1-A) of the Act, it was held as under:

3. Section 23(1-A) reads thus:

23. (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.

Explanation.--In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be exclused.

6. It is, as we see, clear from Section 23(1-A) that the starting point for the purposes of calculating the amount to be awarded thereunder, at the rate of 12 per centum per annum on the market value, is the date of publication of the Section 4 notification. The terminal point for the purpose is either the date of the award or the date of taking possession, whichever is earlier. In the present case, possession of the land having been taken prior to the publication of the Section 4 notification, that terminal is not available. The only available terminal is the date of the award. The High Court, therefore, was in no error in holding that the Appellants were entitled to the additional compensation u/s 23(1-A) for the period 8.3.1991 to 6.2.1993.

7. Section 23(1-A) admits of no meaning other than the meaning that we have placed upon it. There is no room here for any construction other than that given above. It is only where a provision is ambiguous that a construction that leads to a result that is more just can be adopted. Having regard to its clear terms. Section 23(1-A) must receive the only construction it can bear. We are of the view, therefore, that the law has been correctly laid down in the decision in Special Tahsildar (LA), P.W.D. Schemes v. M.A. Jabbar, and that has not been correctly laid down in Asstt. Commr., Gadag Sub-Division v. Mathapathi Basavannewwa, and, for that matter in State of H.R v. Dharam Das.

17. A Full Bench of this Court in Narotam Ram v. Land Acquisition Collector and Ors. Regular First Appeal No. 322 of 2000 and other connected cases, speaking through one of us (Kamlesh Sharma, J.) was called upon to decide the following two questions:

(i) If in a given case the actual possession of the acquired land is taken before the date of Notification u/s 4 of the Act or from the date of taking possession u/s 16 or 17 of the Act, whether the claimant is entitled to additional compensation u/s 23(1-A) of the Act from the date of taking actual possession or from the date of notification u/s 4 of the Act?

(ii) Whether the interest u/s 28 of the Act is to be paid from the date of possession taken u/s 16 or 17 of the Act?

18. First question was answered in the following terms:

Therefore, in view of the ratio of above judgment it is finally settled that additional compensation u/s 23(1-A) of the Act is payable from the date of notification u/s 4 of the Act and not from the date of taking actual possession upto the date of award or date of taking possession under the Act, whichever is earlier.

19. And the second question was answered as under:

Therefore, in view of above discussion our answer to reference No. (ii) is that the interest u/s 28 of the Act is to be paid from the date the possession is taken over under the Act, which in no case can be before issuance of notification u/s 4 of the Act.

20. In view of the aforesaid discussion and the legal position, it is held that the Respondents are entitled to additional compensation as well as interest in all these cases from the date of publication of notification u/s 4 of the Act and not to a prior date as has been ordered by learned District Judge. Thus, the award is modified accordingly by holding that on the market value assessed by the Land Acquisition Collector which stood enhanced vide impugned award by the reference Court i.e. District Judge, Shimla, the Respondents are only entitled to additional compensation as well as interest from the date of publication of notification in Rajpatra u/s 4 of the Act as well as to the additional compensation as per law, and the impugned award by the reference Court is modified in all these cases accordingly.

21. Advocate General while assailing the enhancement made by learned District Judge submitted, that looking to the nature of evidence examined by Respondents during the course of reference proceeding, increase in rates by no stretch of imagination can be sustained. He laid great emphasis on the statements of PWs 1 to 4 and submitted that there is no legal evidence to support such enhancement. As such, no enhancement should have been allowed by learned District Judge. Per him, statements of the PWs are general in character, without connecting the land under acquisition with those referred to in the statements of these witnesses regarding their nature, topography and location vis-a-vis the land which is on the National Highway at Shoghi on Shimla-Kalka Highway from Shogi Bazar to Kalka. Unless similarity was established in case of land under acquisition with land under Highway, contiguity by itself even if be assumed to be there for the sake of argument, is meaningless. Thus, he

prayed for allowing the appeals of the State by reducing the compensation to what was allowed by the Land Acquisition Collector in his award and also by dismissing the cross-objections.

22. All these pleas were again controverted by learned Counsel for the Respondents. They submitted that there is no question of reduction of compensation as enhanced. Rather according to them, compensation needs to be increased as claimed in the cross-objections while dismissing the appeals of the State. According to Mr. Kanwar, land under acquisition was just abutting Shoghi Bazar though the same was situate in Village Pawar. Per him, both these villages are contiguous. Besides this, the land under acquisition was below the National Highway passing through Shoghi Bazar on one side, and it passed through Electronics Industrial Estate on the other. The land under acquisition had great potential of future development. He further urged that substantial damage was also done on account of severance of the land under acquisition on its both sides, i.e. upper and lower, due to acquisition in question.

23. In this behalf, both sides referred to the statements of PWs 1 to 4, 9 and 10 as well as RWs besides Ext. PW-9/A and Ext. PW-10/A.

24. Nand Lal PW-1 is attorney of Chet Ram. According to him, land under acquisition starts from Shoghi in which area, Electronics Industrial Estate has been developed which is next to their land. Water and electricity was available. Railway and Highway also about these lands. There were fruit bearing and timber trees standing on the land. According to him, land was sold at the rate of Rs. 5,00,000 per Bigha. He placed on record sale deeds mark A, B and C. He further stated that demarcation was not done at the spot and area in excess has been taken over than what was notified.

25. Hardev Sharma is PVV-2. He is one of the claimants. Per him, besides his, the land of number of other persons has been acquired for the construction of the road in question which was situate near Shoghi. Industrial area passes through this village. National Highway is at a distance of 1/2 km. below this road. Land under acquisition could be used for housing purposes in Industrial Area, people have constructed sheds. Nearby land was sold at the rate of Rs. 25,000, 20,000 per Biswa. He also stated that land has been damaged due to acquisition on account of severance. Compensation awarded on the basis of price of village Panog is not correct. Because this village is at a distance from the land under acquisition.

26. PW-3 is Bali Ram. According to him, National Highway passes above village Pawar. Industrial area is at a distance of 30/40 metres from village Pawar. Part of the land under acquisition is near this place as per this witness.

27. PW-4 is Kishan Dass attorney of Amba Dutt Respondent. Per this witness, land under acquisition is at a distance of 4/5 Kms. from Shoghi. He again stated that it is at a distance of 3.50 Kms. which is next to Shoghi. Land under acquisition is near the Industrial Area.

28. In addition to the statements of these witnesses, reliance was placed by Mr. Kanwar on the statements of PW-9 Gursharan Sharma and PW-10 Diwakar Dutt. PW-9 has proved on record a copy of sale deed Ext. PW-9/A whereby he purchased one Biswa of land on 30.3.1991. PW-10 Diwakar Dutt had purchased four Biswas of land. Vide sale deed dated 10.12.1988 registered on 29.12.1988 sale deed Ext. PW-10/A, dated 10.12.1988 registered on 29.12.1988.

29. With a view to establish severance, reference was made to the statement of PW-7 Mangat Ram Patwari. Suffice it to say that in order to succeed on the basis of sale deeds Ext. PW-9/A and Ext. PW-10/A, Respondents were required to show that the lands under acquisition and what was the subject matter of these two sale deeds were similar in nature as well as in location and potentials. That would have been a good ground to compel this Court to take into account these two sale deeds and then assess the market value of the land in question. Neither PWs 1 to 4 nor PWs 9 and 10, have said anything in this behalf. At the cost of repetition, it may be noted that statements of PWs 1 to 4 are general in nature without connecting the land under acquisition with those which was subject matter of the two sale deeds as also of sale-deed Mark-C.

30. Faced with this situation, Mr. Kanwar and Mr. Sharma, learned Counsel submitted that onus was on the Appellant/State to have proved the market value of the land under acquisition. In this behalf, reliance was placed on a decision of the Supreme Court reported as Land Acquisition Officer and Mandal Revenue Officer Vs. V. Narasaiah, When a reference is made to this decision, in our considered view, it cannot be read out of the context. Reason being that in this decision on the question of admissibility of registered documents u/s 51A of the Act was being considered. In that context after referring to this provision, as well as Section 57(5) of the Registration Act, this observation was made. In our view, it is for the State to show that the market value assessed is correct on the date of publication of notification in Rajpatra u/s 4 of the Act. But this question will only arise when claimants like Respondents first establish before Reference Court as to what was the market value on such date. Unless inadequary of market value was shown during the course of reference, we feel that question of proving that the offer made in the award represents the correct market value will not arise. Thus, no benefit can be derived by the Respondents from the observations made in the judgment of the Supreme Court, supra. Only benefit that can be derived by the Respondents on the basis of this decision is that the certified copies of the sale deeds tendered during proceeding under the Act can be read in evidence and nothing more. Accordingly plea urged on behalf of Respondents as noted hereinabove is hereby rejected.

31. A number of precedents were cited by learned Counsel for the Respondents with a view to demonstrate that in the absence of sale instances of land in or around the land under acquisition, the two sale instances i.e. Ext. PW-9/A and Ext. PW-10/A, are good guidelines for assessing the compensation. Ordinarily we would have looked into the matter. However, we are not referring to case law for

the simple reason that there is no evidence of similarity regarding quality of land, as well as its location and other geographical conditions being the same in the land under acquisition as well as those which is subject matter of Ext. PW-9/A and Ext. PW-10/A. That being the position, plea urged on behalf of the Respondents to enhance the compensation on the basis of Ext. PW-9/A and Ext. PW-10/A i.e. the two sale instances is hereby rejected.

32. Learned Counsel for the Respondents submitted that substantial damage was caused on account of severance to the remaining lands of the Respondents therefore, according to Mr. Kanwar compensation is liable to be enhanced. Again, reference was made to the statements of PWs 1 to 4, 7 and 11 in this behalf, besides documentary evidence.

33. We may again observe that we are not going into this aspect of the case. Because there was specific issue framed by learned District Judge i.e. Issue No. 2 in all the appeals, except R.F.A. No. 46 of 1995. This issue was not pressed before the reference Court, as such, there is no need for us to go into this plea of the Respondents for determining compensation on account of severance, which is a relevant factor to be taken into account while assessing the compensation. Accordingly, this plea is also rejected.

34. Learned Counsel for the Respondents further submitted that de hors of this, Court can take judicial notice under law of increase in prices of lands. On a reference to the impugned award, we are satisfied that learned District Judge has taken into account this position and has thus enhanced the compensation as noted hereinabove. He has substantially enhanced the compensation in all categories of the lands. On the basis of materials on the files of these cases, we are satisfied that the compensation assessed by learned District Judge represents the market value of the land in question as per law and it calls for no interference. Learned Counsel for the Respondents/claimants submitted that they are entitled to interest on solatium as enhanced by learned District Judge.

35. We feel that this plea needs to be upheld in view of the decision of the Constitution Bench of the Supreme Court in Sunder Vs. Union of India, What is relevant for the purposes of these appeals is extracted hereinbelow:

20. We may now see whether exclusion of the factor "any disinclination of the person interested to part with the land acquired" from being considered as part of the compensation indicated in Section 24 of the Act would be of any aid for excluding solatium from the purview of interest accrual process. No doubt what is intended u/s 23(2) is additional to the market value of the land and "in consideration of the compulsory nature of the acquisition". But it cannot be equated with any damage caused on account of "any disinclination of the person to part with the land acquired.

21. It is apposite in this context to point out that during the enquiry contemplated u/s 11 of the Act the Collector has to consider the objections which any person interested has stated pursuant to the notice given to him. It may be

possible that a person so interested would advance objections for highlighting his disinclination to part with the land acquired on account of a variety of grounds, such as sentimental or religious or psychological or traditional etc. Section 24 emphasises that no amount on account of any disinclination of the person interested to part with the land shall be granted as compensation. That aspect is qualitatively different from the solatium which the legislature wanted to provide "in consideration of the compulsory nature of the acquisition.

22. Compulsory nature of acquisition is to be distinguished from voluntary sale or transfer. In the latter, the landowner-has the widest advantage in finding out a would be buyer and in negotiating with him regarding the sale price. Even in such negotiations or haggling, normally no landowner would bargain for any amount in consideration of his disinclination to part with the land. The mere fact that he is negotiating for sale of the land would show that he is willing to part with the land. The owner is free to settle terms of transfer and choose the buyer as also to appoint the point of time when he would be receiving consideration and part with his title and possession over the land. But in the compulsory acquisition the landowner is deprived of the right and opportunity to negotiate and bargain for the sale price. It depends on what the Collector or the Court fixes as per the provisions of the Act. The solatium envisaged in Sub-section (2) "in consideration of the compulsory nature of the acquisition" is thus not the same as damages on account of the disinclination to part with the land acquired.

23. * * * *

24. The proviso to Section 34 of the Act makes the position further clear. The proviso says that "if such compensation" is not paid within one year from the date of taking possession of the land, interest shall stand escalated to 15% per annum from the date of expiry of the said period of one year "on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry". It is inconceivable that the solatium amount would attract only the escalated rate of interest from the expiry of one year and that there would be no interest on solatium during the preceding period. What the legislature intended was to make the aggregate amount u/s 23 of the Act to reach the hands of the person as and when the award is passed, at any rate as soon as he is deprived of the possession of his land. Any delay in making payment of the said sum should enable the party to have interest on the said sum until he receives the payment. Splitting up the compensation into different components for the purpose of payment of interest u/s 34 was not in the contemplation of the legislature when that section was framed or enacted.

25. * * *

26. We think it useful to quote the reasoning advanced by Chief Justice S.S. Sandhawalia of the Division Bench of the Punjab and Haryana High Court in State of Haryana v. Kailashwati SCC p. 119, para 10.

Once it is held as it inevitably must be that the solatium provided for u/s 23(2) of the Act forms an integral and statutory part of the compensation awarded to a landowner, then from the plain terms of Section 28 of the Act, it would be evident that the interest is payable on the compensation awarded and not merely on the market value of the land. Indeed the language of Section 28 does not even remotely refer to market value alone and in terms talks of compensation or the sum equivalent thereto. The interest awardable u/s 28 therefore would include within its ambit both the market value and the statutory solatium. It would be thus evident that the provisions of Section 28 in terms warrant and authorise the grant of interest on solatium as well.

27. In our view the aforesaid statement of law is in accord with the sound principles of interpretation. Hence, the person entitled to the compensation awarded is also entitled to get interest on the aggregate amount including solatium. The reference is answered accordingly.

36. So far plea of taking over land in excess of that was notified u/s 4 of the Land Acquisition Act, 1894 is concerned, Respondents are free to take action as permissible under law for the redressal of their grievances.

37. No other point is urged.

38. In view of the aforesaid discussion, while partly allowing these appeals filed by the State, it is held as under:

(a) That interest is payable on the compensation for the lands under acquisition only from the date of publication of the notification u/s 4 of the Act, i.e. 23.12.1989 in Rajpatra and not prior to it as has been awarded by learned District Judge. In addition to this, Respondents are also held entitled to additional compensation u/s 23(1-A) of the Act from 23.12.1989 the date of publication of notification u/s 4 of the Act;

(b) That at the same time, it is also held that Respondents/claimants are entitled to interest on the amount of solatium on the enhanced awarded amount of compensation also as per law;

(c) Subject to these modifications, the appeals as well as cross-objections are dismissed with no order as to costs;

(d) Collector, Land Acquisition shall work out the compensation in terms of (a) and (b) by or before 31.1.2003 in each appeal and place it on the record of R.F.A. concerned.

Authenticated copy of this judgment/award be placed on the files of all connected cases.