

(2005) 01 SHI CK 0015
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 136 of 2004

State of H.P. and Another	Vs	APPELLANT
Rajinder Singh and Others		RESPONDENT

Date of Decision : 07-01-2005

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 28A

Citation : (2005) 1 ShimLC 354

Hon'ble Judges : M.R. Verma, J;A.K. Goel, J

Bench : Division Bench

Advocate : M.S. Chandel, General and D.C. Pathik, A.A.G, for the Appellant;
G.D. Verma and B.C. Verma, for the Respondents 1 to 18 and Tek Chand
Sharma, for the Respondents 19 to 21, for the Respondent

Final Decision : Dismissed

Judgement

Arun Kumar Goel, J.—This writ petition has been filed by the State challenging the award dated 5.7.2003, passed by Land Acquisition Collector, HP PWD, South Zone, Winter Field, Shimla, in case No. 4/8-28A-32/ 2002, u/s 28A of Land Acquisition Act, 1894, (hereinafter referred to as "the Act").

2. Facts as they emerge and regarding which learned Counsel for the parties were not at variance are, that land of the Respondents and other persons was acquired. Respondent No. 1 Rajinder Singh claimed that he had approached the Land Acquisition Collector u/s 18 of the Act for referring his case to the Court for determination of compensation, as he was not satisfied with his award. This was not forwarded. As such, he filed writ petition No. 1648 of 2002. Its copy alongwith reply filed by the Land Acquisition Collector as well as Executive Engineer, Shimla, is placed on record as Annexure R-I collectively.

3. After passing of the award u/s 18 of the Act in the cases of persons interested other than Respondents 1 to 21 by learned Additional District Judge, Shimla, on 25.6.2002, application u/s 28A of the Act was filed by these Respondents. On the

basis of the award of learned Additional District Judge of this date in Land Ref. Nos. 43-S/4 of 1996 to 47-S/4 of 1996, enhancement was claimed by these Respondents. Consequently, after hearing the parties, Land Acquisition Collector enhanced the compensation payable to Respondents 1 to 21.

4. In this background, present writ petition has been filed by the Petitioners alleging that the Land Acquisition Collector could not have entertained application u/s 28A of the Act, as it was beyond the period of limitation prescribed under law for entertaining the same. According to learned Advocate General, Land Acquisition Collector had no jurisdiction to either condone the delay or to have entertained the application in question beyond the period prescribed under law.

5. These please have been controverted by learned Counsel for the Respondents. According to Shri Verma, learned Senior Counsel appearing for Respondents 1 to 18, this stand on the part of welfare State is not only unwarranted and uncalled for, but is also contrary to its own stand in reply to CWP No. 1648 of 2002. He thus prayed for dismissal of the writ petition. He, however, fairly conceded that in case this Court upholds the plea of limitation urged by learned Advocate General, the Court has no option but for allowing this writ petition and setting aside the impugned award u/s 28A of the Act.

6. For the reasons to be recorded hereinafter, we feel that this writ petition is purely an afterthought aimed to deny the legitimate claim of the private Respondents. Admittedly, present writ petition was filed on 4.3.2004. As already noted, Respondent No. 1 Rajinder Singh had filed CWP No. 1648 of 2002, seeking a direction to Respondents 1 to 3 therein to forward his reference petition to the Court of District Judge, Shimla, for disposal in accordance with law. While resisting this claim of Rajinder Singh, stand of the Respondents in that case, makes an interesting reading. For ready reference relevant paragraphs from the reply in CWP No. 1648 of 2002 are extracted hereinbelow:

PRELIMINARY SUBMISSIONS:

1. That the writ petition is not maintainable in eye of law and is liable to be dismissed in limine. It is submitted that the Respondent No. 2 Land Acquisition Collector passed the award u/s 28A of the Land Acquisition Act, 1894. It is pertinent to mention here that the Petitioner Rajinder Singh has not submitted any application u/s 18 of the Land Acquisition Act and when the reference was answered by the Learned District Judge, the Petitioner made the application u/s 28A to the Respondent No. 2 and the award was passed on the analogy of the reference passed by Learned District Judge, Shimla.

Para 5...It is further submitted here that the amount of compensation as per award dated 5-7-2003 shall be deposited with Respondent No. 2 by the Department on receipt of L.O.C. from Government for which the matter has already been forwarded to the Government through proper channel by the Superintending Engineer, 4th Circle HP PWD, Shimla. It is submitted here that immediately on the receipt of sanction/L.O.C., the amount of award shall be paid

to the Petitioners of petition u/s 28A including the present Petitioner as per their share.

Para 6...It is further submitted here that the Petitioner after the announcement of the award by Learned District Judge, Shimla has applied for enhancement of compensation u/s 28A. Copy of the petition is annexed here as Annexure R11. It is further submitted here that the award u/s 28A of the Land Acquisition Act has been announced by the Land Acquisition Collector. Copy of which is annexed as Annexure R111.

7. When specifically questioned, learned Advocate General submitted that Respondents cannot take any benefit, muchless advantage from this stand of his clients. According to him, they have to stand on their own legs. In addition to this, Shri Chandel also pointed out that weakness in the defence of his clients will not entitle the Respondents to claim benefit of the award u/s 28A of the Act, unless it was also shown that their application was within time.

8. This plea has been raised simply to be rejected. At the risk of repetition, it may be appropriate to notice that award of Land Acquisition Collector, u/s 28A (Annexure P-I) is dated 5.7.2003. Reply to CWP No. 1648 of 2002 supported with the affidavit of Superintending Engineer, 4th Circle HPPWD, Shimla is dated 5.9.2003. As such though plea of limitation was open to the State admittedly was not raised. To the contrary it is held out in the reply, that the amount of compensation as per award dated 5.7.2003 shall be deposited with Respondent No. 2 (Land Acquisition Collector), on receipt of L.O.C. from Government for which matter has been forwarded to the Government through proper channel. It is further case of the Respondents, that the amount shall be paid to the Petitioners u/s 28A of the Act. By taking this stand in reply to CWP No. 1648 of 2002, plea of limitation urged in this writ petition i.e. CWP No. 136 of 2004 stands waived, as well as given up.

9. Even otherwise now after one and half year to contest the claim of Respondents 1 to 21, simply on the plea of limitation is neither just nor proper in the peculiar facts and circumstances of this case. We may hasten to add that in a given case state would not be precluded from legitimately setting up the plea of limitation. That in our considered view is not the situation in the present case, enabling the Petitioner-State to contest the claim of Respondents 1 to 21.

10. No other point is urged.

11. Before parting with this case we may notice a factual situation that was brought to our notice by Shri Tek Chand Sharma, learned Counsel appearing for Respondents 18 to 21. Per him, his clients had filed Land Reference No. 47-S/4 of 1996. Further according to him, RFA No. 127 of 2003 has been filed by the State. If this is factually correct, then application u/s 28A of the Act by his clients was not maintainable. In such a situation writ petition stands allowed so far payment of compensation to Respondents 19 to 21 vide award dated 5.7.2003, u/s 28A of the Act is concerned. Reasons being that their claim for grant of

compensation would be adjudicated in appeal.

12. In view of the aforesaid discussion and keeping in view the peculiar facts and circumstances of the case especially in the light of the stand of Petitioners in CWP No. 1648 of 2002, this writ petition has no merit, which is accordingly dismissed against Respondents 1 to 18. And so far against Respondents 19 to 21 is concerned, award of the Land Acquisition Collector dated 5.7.2003 is set aside, in view of the pendency of RFA No. 127 of 2003 in the Court, leaving the parties to bear their own costs.