
(2010) 04 SHI CK 0105
In the High Court Of Himachal Pradesh

The Nathpa Jhakri Hydel Project Corporation

APPELLANT

Vs

Charan Dass and Others

RESPONDENT

Date of Decision : 20-04-2010

Acts Referred:

Land Acquisition Act, 1894 — Section 18, 23, 28, 4, 54

Citation : (2010) 04 SHI CK 0105

Hon'ble Judges : V.K. Ahuja, J

Bench : Single Bench

Judgement

V.K. Ahuja, J.—This judgment shall dispose of an appeal filed by the appellant u/s 54 of the Land Acquisition Act (here-in-after referred to as 'the Act') and the cross objections, as against the award, dated 28.7.1999, passed by the learned District Judge, Kinnaur, Civil Division at Rampur Bushahr, vide which the reference petition filed by respondent No. 1 was allowed.

2. Briefly stated the facts of the case are that the land of respondent No. 1 (hereinafter also referred to as the petitioner) was acquired vide notification, dated 8.9.1988, issued u/s 4 of the Act for the construction of a residential colony for NJPC Project at Jhakri. The Land Acquisition Collector entered into reference and decided the reference and assessed the market value of the land as under:

Classification of land Rate of land per bigha 1. Kair Awal Rs. 56,278/- 2. Bakhal Awal Rs. 26,500/- 3. Bakhal Doem Rs. 23,500/- 4. Uncultivated land Rs. 20,000/-

3. The petitioner was also granted compensation for the use and statutory benefits as under:

1. Land Rs. 7,282.92 2. CAC at the rate of 30% Rs. 1,09,696.48 u/s 23(2) of the Act 3. Additional acquisition Rs. 1,20,666.12 charges at the rate of 12% 4. House Rs. 3,58,372.00 5. Total Rs. 5,96,017.00 6. Less 5% on account of Rs. 29,207.00 debris 7. Net Total Rs. 5,66,810.52, or say Rs. 5,66,811.00

4. The petitioner filed reference petition u/s 18 of the Act claiming that the value of the land was Rs. 5.00 lac per bigha. The petitioner was owning a double storey building, which was rented out to different tenants and the petitioner was getting monthly rent of Rs. 5,350/-. The petitioner claimed that he has not been paid the compensation adequately, hence the petition filed by him. The respondent denied the allegation and on the pleadings of the parties, the learned District Judge framed the following issues:

1. Whether the respondent No. 3 has inadequately assessed the compensation of acquired properties, if so, what is the correct amount of compensation? OPP

2. Relief.

5. Parties led their evidence and the learned trial Court vide its impugned judgment held that the petitioner is entitled to the market value of the building at Rs. 5,96,600/- against the amount of Rs. 3,58,372/- (les 5% on account of debris). Thus, the petitioner was held entitled to enhanced compensation to the tune of Rs. 2,38,228/- (less 5% on account of debris).

6. Being aggrieved by the said award passed by the learned trial Court, the NJPC/ appellant has filed the present appeal while cross objections have been preferred by respondent No. 1, who claimed that he has been wrongly denied the recovery of amount of interest as permissible under the provisions of Section 28 and other provisions of the Act.

7. I have heard the learned Counsel for the parties and have gone through the record of the case.

8. The main submissions made by the learned Counsel for the appellant were that the learned trial Court has wrongly enhanced the value of the building of the petitioner though there was no material before it to allow the enhancement. It was submitted that the so called expert examined by the petitioner was not an expert, he had not carried out the measurements properly or assessed the market value of the building and as such no reliance could be placed upon the testimony of the said expert. This was the main plea raised by the learned Counsel for the appellant.

9. On the other hand, the main contention put forth by the learned Counsel for the petitioner/respondent No. 1 was that the petitioner had produced the expert whose statement was relied upon by the learned trial Court and rightly so and as such, he was entitled to the enhanced amount, as assessed by the learned trial Court. The main argument put up by the learned Counsel for respondent No. 1 was that the learned trial Court had wrongly disallowed the interest u/s 28 of the Act observing that the possession had not been taken by the appellant and since the petitioner was getting the rent even after the Notification u/s 4 of the Act was issued, which observation is incorrect since the petitioner had statutory right to claim rent and only some of the tenants were in possession not all the tenants over the building in question.

10. Thus, from the arguments advanced at the hearing only two questions arise mainly for disposal which shall be taken by this Court.

11. Coming to the first question, the value of the building had been assessed by the Land Acquisition Collector at Rs. 3,58,372/-. The same was enhanced by over Rs. 2.00 lacs by the learned trial Court relying upon the testimony of PW-5 Lalit Kumar, the so called expert examined by the petitioner. His statement was the only statement relevant and considered by the learned trial Court also and, therefore, a reference has to be made to his testimony to consider the question as to what extent it could be relied upon.

12. PW-5 Lalit Kumar, J.E., has admitted that he is only Higher Secondary, though he has done B.E. from the Institution of Engineers in India in the year 1988. He stated that he went to the spot on 2.1.1990 and after due verification of the structures, he applied the schedule of HPSR, 1987. He gave his report as Ext.PA. A perusal of his statement shows that he did not state anything in regard to the age of the building, the probable life of the building and how much depreciation was made by him from the value so arrived at by him on the basis of the schedule of 1987 applied by him. He admitted that he went to the spot without informing the officials of the Land Acquisition Collector. He did not see any previous report made in regard to the valuation. He stated that 10% of the cost was added. He admitted that he was told at the spot that the construction work was done in the year 1984-85. He visited the site in December, 1989 and again stated that he does not remember the date or whether he gave any indication in his report. He did not verify about the wood used if it was of deodar, but he applied the rate of deodar second class. It was suggested to him that the building was constructed in the year 1970 but he denied the suggestion though the answer has not been correctly recorded. He stated that he has mentioned in the report that the building was stated to be one year old but he has not recorded his any expert opinion in this regard. He admitted that the depreciation was to be made taking the life as 99 years. He admitted that he has not produced any certificate that he was a certified evaluator.

13. Coming to the testimony of the petitioner Charan Dass as PW-3, he has stated that there were 14 tenants in the building. He stated that the construction of the building was started in the year 1984 and was completed in the year 1986 and has further stated about the rent being received from different tenants. He stated that he has not kept any accounts or receipts of the amount spent nor these have been produced by him. He denied that his son was also running shop in this building and stated that he used to give receipts to some of the tenants only. He stated again in cross examination that the construction of the house was started in the year 1982 and was completed in the year 1986.

14. From the above discussion of the evidence, it is clear that the so called expert namely PW-5 Lalit Kumar has not stated about any experience in making assessment and, therefore, by no stretch of imagination, he could be called an expert who could be solely relied upon to assess the market value of the building

of the petitioner. He was not possessing any certificate or anything to show that he was an expert and was qualified to make assessment. His statement shows that he accepted the version of the petitioner that the building was one year old and he did not make even his own assessment by approximation as to when the building was constructed. He takes the rates of the year 1987 i.e. after the construction of the building and he nowhere stated that he made the deduction in the value and has given the report at the instance of the petitioner, which conclusion can be drawn from his statement. In case he had applied the rates of the year 1987 i.e. after the construction, due concession had to be made as to what were the rates prevalent when the building was constructed and the assessment could have also been made about the age of the building, which he never made. He did not have any experience, was not qualified and made the report as it suited him and in regard to the age of the building, his statement is contrary to the statement of the petitioner, who admits that he started the building in the year 1982 while the rates of 1987 have been applied. I am not in agreement with the observations of the learned trial court, who relied upon the report of the so called expert without any murmur and enhanced the compensation in regard to the building wrongly.

15. On the above point, the learned Counsel for the petitioner had submitted that the question of loss of rent can be taken into account and multiplier of 10 should have been applied. In support of his submission, he relied upon the decision of the Apex Court in State of M.P. Vs. Dhara Singh and Another, which decision is in a murder case, as per the list of books given by the learned Counsel for the petitioner/respondent No. 1.

16. On the other hand, the learned Counsel for the appellant had relied upon a decision of a learned Single Judge of this Court in FAO No. 460 of 2001, titled Lal Sukh Kapatia v. The Land Acquisition Collector and Ors., decided on 20.6.2008. In that case, the same witness namely Lalit Kumar appears to have been examined and certain observations were made by the Court in regard to his testimony. The said observations cannot be used to condemn the witness since the observations were made by the learned Single Judge based upon his testimony in that case and the said testimony is not relevant in the present case. Even it cannot be said that he was the same Lalit Kumar who appeared in this case as a witness and, therefore, this judgment cannot be said to be of any help to the appellant and the statement made by the witness in this case has to be appreciated as to whether it could be accepted or not.

17. I have already observed that this witness was neither an expert nor there is sufficient data or material on record that his testimony could be relied upon to hold that it could be the basis for enhancement of compensation for the building which was done by the learned trial Court. There is no other material on record. In case the appellant had failed to produce any witness, it cannot be said that the reliance has to be placed upon the witness produced by the petitioner even though the testimony of the said witness does not inspire confidence. Therefore,

I am of the opinion that no reliance can be placed upon the testimony of this witness and there is no material on record to hold that the value of the building assessed by the Collector was wrong on any basis.

18. In regard to the question that the rent should have been considered, when the petitioner does not state in detail as to how much amount he was getting and does not produce any rent receipts, his statement cannot be taken as a gospel truth to hold that he was getting the rent at Rs. 6,000/-, as stated by him. The statement of PW-1 Ramesh Chand shows that he was paying Rs. 2,000/- for one portion of the building as rent, but he admits that this building was taken on rent by them on 29.4.1989 i.e. after the issuance of the notification u/s 4 of the Act in September, 1988 and, therefore, the said creation of tenancy cannot be made the basis when the notification had already been issued u/s 4 of the Act. The rent being received by the petitioner cannot be made the basis to assess the market value of the building, which had to be assessed on the basis of the statement of the expert and evidence so led before the Collector, who assessed the market value, which, as per the evidence led by the petitioner, cannot be said to be incorrect and as such the petitioner was not entitled to any enhancement for the value of the building, as granted by the learned trial Court. The petitioner is, therefore, entitled to the value of the building as assessed by the Land Acquisition Collector. The petitioner is also not entitled for payment of the compensation for the site of the acquired building separately.

19. Coming to the other material question that the interest was wrongly disallowed by the learned trial Court without framing any issue, a perusal of the judgment passed by the learned trial Court shows that the learned trial Court had observed in para 22 of the judgment that admittedly the possession of the acquired building has not yet been taken by the acquiring Corporation, namely, the appellant and a reference was made to the testimony of RW-1 Kamal Kumar and the observations were made by the Court. Thus, it was held that since the petitioner was enjoying the usufruct of the acquired building till date, he is not entitled to the interest u/s 28 of the Act. This fact is not disputed that the possession has not been taken by the appellant so far for the reasons best known to them and it is also in the evidence of the petitioner, including the statement of the Manager of the Bank, namely, PW-1 Ramesh Chand, who stated that they were rented out this building even after the acquisition proceedings started and the petitioner himself admits that he has been getting the rent of various portions from the tenants in the building. The learned Counsel for the appellant had referred to the provisions of Section 28 of the Act, which show that the Collector may be directed to pay interest on excess compensation, meaning thereby that the grant of interest u/s 28 of the Act is discretionary and not mandatory. In such circumstances, when the powers were vested in the court to direct the Collector to pay interest on excess compensation under the provisions of the Act and that has been exercised by the Court, it cannot be said that an issue should have been framed in this regard and the court should have considered and decided this question thereafter only. However, no prejudice has

been caused to the petitioner who has been given an opportunity before this Court to agitate the findings and those findings are being agitated by him even though no issue had been framed by the learned trial Court in this regard. I am not convinced of the submissions that in the absence of an issue, no order could have been passed by the learned trial Court, who exercised its jurisdiction rightly keeping in view the fact that even in spite of the issuance of the notification or the award, the petitioner continued to be in possession and had been getting the rent also from the tenants. Once the possession has not been given or taken by the appellant and the petitioner is getting the rent also from the tenants, he cannot claim that he is also entitled to interest u/s 28 of the Act, which discretion was rightly exercised by the learned trial Court and it calls for no interference by this Court. No other material point was urged during the course of arguments.

20. In view of the above discussion, the appeal filed by the appellant is accepted partly to this extent that the value of the building, as assessed by the learned District Judge, is set aside and the value so assessed by the Land Acquisition Collector is held to be correct and the findings of the learned trial Court declining to grant interest u/s 28 of the Act are upheld. The Land Acquisition Collector shall calculate the amount and pay the same to the petitioner within three months, if not already paid. The cross objections filed by the petitioner are accordingly dismissed.

21. The appeal as also the cross objections stand disposed of accordingly.