
(2016) 12 SHI CK 0006
In the High Court Of Himachal Pradesh
Case No : CMPMO No. 487 of 2016

Vinod Kumar

APPELLANT

Vs

State of H.P

RESPONDENT

Date of Decision : 22-12-2016

Acts Referred:

Land Acquisition Act, 1894 — Section 18

Citation : (2017) LatestHLJ(HP) 81

Hon'ble Judges : Tarlok Singh Chauhan, J.

Bench : Single Bench

Advocate : Mr. B.S. Chauhan, Sr. Advocate with Mr. Manish Datwalia, Advocate, for the Petitioners; Mr. Meenakshi Sharma, Addl. A.G. with Mr. J.S. Guleria, Asstt. A.G, for the Respondents

Final Decision : Disposed Off

Judgement

Tarlok Singh Chauhan, J.(Oral) - It is rather unfortunate that even after the legal position of law having been settled more than one and a half decade back, this Court is once again called upon to answer the question as to whether Reference Petition under section 18 of the Land Acquisition Act (for short the "Act"), can be ordered to be dismissed in "default".

2. The impugned order reads thus:

"19.11.2015: Present : None for the petitioners. Sh. Sudhir Sharma, Ld. Dy.D.A. for the state/respondents. Petition called time and again, neither petitioners, nor any counsel appeared on their behalf. It is 3.55 P.M. Hence, the petition is hereby dismissed in default. File after its due completion be consigned to the records."

3. As far back as in the year 2002 (precisely 24.1.2002), the Hon"ble Supreme Court in Khazan Singh (dead) by L.Rs. v. Union of India, AIR 2002 SC 726, had made it absolutely clear that reference made under section 18 of the Act cannot be dismissed in default. It would be apt to reproduce the relevant observations, which read thus:

"[7] The provisions above subsumed would thus make it clear that the Civil Court has to pass an award in answer to the reference made by the Collector under Section 18 of the Act. If any party to whom notice has been served by the Civil Court did not participate in the inquiry it would only be at his risk because an award would be passed perhaps to the detriment of the concerned party. But non participation of any party would not confer jurisdiction on the Civil Court to dismiss the reference for default."

4. This settled proposition of law was thereafter repeatedly followed and reiterated by this Court. Reference in this regard can conveniently be made to:

i) Thakur Dass v. Land Acquisition Collector and others, Latest HLJ 2003 (HP) 13; and

ii) Yogesh Verma and others v. State of H.P. and others, 2004 (1) Shim. L.C. 16

5. In view of the above said well settled position of law, impugned order dated 19.11.2015 cannot be sustained and is accordingly set aside. Learned Additional District Judge (CBI), Circuit Court at Theog, Shimla, shall restore the Reference Petition to its original number and decide the same in accordance with law. The parties/their counsel are directed to cause appearance before the learned Additional District Judge (CBI), Circuit Court at Theog on 6.1.2017.

6. The petition is disposed of in the aforesaid terms, leaving the parties to bear their own costs.